UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MADELAINE DURAND
205 Mogul Mountain Drive
Reno, Nevada 89523
(775) 345-0141

EDWIN DURAND
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MICHAEL WOODS,
971 Arden Street
Longwood, Florida 32750
(972) 302-1437

Plaintiffs,

v.

DAVID BERNHARDT, SECRETARY OF THE INTERIOR, in his official capacity
1849 C Street, N.W.
Washington D.C. 20240,

U.S. DEPARTMENT OF THE INTERIOR
1849 C Street, N.W.
Washington D.C. 20240,

INTERIOR BOARD OF LAND APPEALS
1849 C Street, N.W.
Washington, D.C. 20240, and

BUREAU OF LAND MANAGEMENT
1849 C Street, N.W.
Washington D.C. 20240

Defendants

Case: 1:20-cv-00338 (C Deck)
Assigned To : Cooper, Christopher R.
Assign. Date : 2/5/2020
Description: Admin. Agency Review

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COMPLAINT FOR JUDICIAL REVIEW

Plaintiffs Madelaine Durand, Edwin Durand, GEM Green Earth Minerals, Inc., and Michael Woods, owners of the Sierra Lady Mining Claims, *Pro Se*, (collectively named "Plaintiffs") bring this Complaint for Judicial Review against the Secretary of the Interior David Bernhardt (the "Secretary"), in his official capacity only; the United States Department of the Interior (the "Department"); The Interior Board of Land Appeals (the "IBLA"); and the Bureau of Land Management (the "BLM") (collectively "Defendants").

I. INTRODUCTION

1. **This is a case of first impression. This situation has never happened before.**

2. The issue in this Complaint is whether the Agency can enforce a judgment that was never filed with the BLM by a party to the Judgment but was filed by a non-party sixteen (16) years after the judgment was entered and six (6) years after the statute of limitations had run making the judgment no longer enforceable under the law.

3. The IBLA's Opinion and the BLM's Decision are plainly erroneous since both consist of fraudulently misquoting both statutory and precedent law. The agency's explanation is so implausible that it could not be ascribed to a difference in view or a product of agency expertise, and completely lacks any reasoned decisionmaking or coherent explanation for the decision.

4. The Defendants have unlawfully deprived the Plaintiffs of their valuable property.

II. JURISDICTION AND VENUE

5. The present action seeks review under the Administrative Procedure Act ("APA") of the Opinion of the Interior Board of Land Appeals ("IBLA"), IBLA 2015-244, 188 IBLA 1 entered on June 6, 2016 (Exhibit 1). The IBLA's Opinion affirmed the California State BLM's July 30, 2015 Decision that the Plaintiffs' twenty-eight (28) placer mining claims named the Sierra Lady Mining Claims were closed based on a 1999 Judgment. Originally the BLM 2015 Decision included thirty (30) mining claims. (Exhibit 2) Subsequently on August 27, 2015 the

BLM removed Sierra Lady No. 164 (CAMC 261331) and Sierra Lady No. 165 (CAMC 261332) from the July 30, 2015 Decision. (Exhibit 3) The BLM closed the remaining twenty-eight (28) Sierra Lady Mining Claims in August 2018.

6. Jurisdiction is proper in this Court under 28 U.S.C. § 1346 (United States as defendant), and 28 U.S.C. § 1331 (Federal Question). This action arises under the laws of the United States, including the General Mining Law of 1872, 30 U.S.C. § 26, et seq., as well as regulations promulgated thereunder and the laws of the State of California. Plaintiffs seek relief under federal law including 5 U.S.C. § 701-706 (Administrative Procedure Act), and the California statutes.

7. This Court also has jurisdiction to review the BLM's July 30, 2015 Decision closing the Sierra Lady Mining Claims because a "preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action." *See* 5 U.S.C. § 704.

8. The Plaintiffs have exhausted their administrative remedies, *see* 43 C.F.R. § 4.403(a), (b)(5), and the IBLA's June 6, 2016 Opinion constitutes "final agency action" under the APA, 5 U.S.C. § 704.

9. The Plaintiffs have standing to bring this action because they have suffered an injury-in-fact that is traceable to Defendants' illegal actions and is redressable through judicial review, the setting aside of those actions, the reinstatement of all the Sierra Lady Mining Claims, and other relief requested.

10. This action is timely filed because it is brought within six years of the BLM Decision and the IBLA Opinion. *See* 28 U.S.C. § 2401(a).

11. Venue is proper in this judicial district under 28 U.S.C. § 1391(e) because the Defendants are agencies and officers of the United States who reside in this judicial district, and

because a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

12. The APA, 5 U.S.C. §§ 702, 706, as well as the Declaratory Judgment Act, 28 U.S.C. § 2201, authorizes this Court to issue the relief (which does not include money damages) sought herein.

III. PARTIES

13. Madelaine Durand is a citizen of the United States and an owner of certain Sierra Lady Mining Claims.

14. Edwin Durand is a citizen of the United States and an owner of certain Sierra Lady Mining Claims.

15. Michael Woods is a citizen of the United States and an owner of certain Sierra Lady Mining Claims.

16. GEM Green Earth Minerals, Inc. is a Nevada Corporation and owner of certain Sierra Lady Mining Claims.

17. Defendant David Bernhardt is the Secretary of the Interior and is being sued in his official capacity only.

18. Defendant Department of the Interior is an executive agency of the United States government.

19. Defendant IBLA, which reviewed the decision of the BLM, acts for the Secretary and the Department on matters involving hearings, appeals, and other review functions. 43.C.F.R. § 4.1.

20. Defendant BLM is a component agency of the Department and manages various public lands and subsurface estates, including those at issue in this case. *See* 43 U.S.C. § 1731(a). The BLM issued the Decision reviewed by the IBLA, leading to the present action.

IV. STATUTORY AND CONSTITUTIONAL BACKGROUND

21. The Administrative Procedure Act calls upon courts to hold unlawful and set aside agency action, findings, and conclusions found to be -- (A) arbitrary, capricious, abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court." 5 U.S.C. § 706(2)(A)(B)(C)(F).

22. "The Administrative Procedure Act requires federal courts to set aside federal agency action that is 'not in accordance with law," 5 U.S.C. § 706(2)(A)—which means, of course, *any* law, and not merely those laws that the agency itself is charged with administering. [*F.C.C. v. NextWave Personal Communications, Inc.*, 537 U.S. 293, 300, 123 S.Ct. 832, 838, 154 L.Ed.2d 863 (2003). (Italics in Original)

23. "The Supreme Court has recognized that Section 706(2)(A) 'requires federal courts to set aside federal agency action' that is 'not in accordance with law.' " *Sierra Club v. United States Army Corps. Of Engineers,* 909 F.3d 635, 655 (2018) quoting *F.C.C. v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300, 123 S.Ct. 832, 154 L.Ed.2d 863 (2003).

24. "(A) simple but fundamental rule of administrative law ** * is *** that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action***." *Burlington Truck Lines, Inc. v. U.S.,* 371 U.S. 156, 169, 83 S.Ct. 239, 246, 9 L.Ed 2d 207 (1962). (Asterisks in original) (quoting *Securities & Exchange Commission v. Chenery Corp.,* 332 U.S. 194, 196, 67 S.Ct. 1575, 1577, 91 L.Ed. 1995 (1947).

25. Plaintiffs cannot be deprived of their property, without due process of law.

FACTUAL BACKGROUND

26. In 1993 Madelaine Durand and Edwin Durand made a discovery of a valuable Diatomite and properly surveyed, monumented, and filed the Sierra Lady Mining Claims in Lassen County, California and with the Bureau of Land Management ("BLM") on land managed by the BLM that was open for location. All necessary assessment work has been performed, all documents have been properly recorded and filed, and all taxes and fees have been paid on the Sierra Lady Mining Claims every year since 1993 to the present day.

27. The Durands are the only parties to have an approved Surface Mining Permit in the State of California in order to mine the Diatomite, working through the time consuming, extensive and extremely costly requirements from Lassen County and a multitude of California and Federal agencies. The Durands' Permit covers multiple sites.[1]

28. In 1997 Syed Arif/dba North American Technical Trading Company (NATTCO) and Norman Rice (collectively "Arif/Rice") filed a SLAPP suit (strategic lawsuit against private persons) against the Durands and American Pozzolan Corporation ("APC") in Lassen County, California because the Durands were speaking out against the illegal activity and corruption of Arif/Rice and others including the corporation Earthco and their owners, several of whom are convicted felons. (American Pozzolan Corporation was the former name for GEM Green Earth Minerals, Inc.)

29. Besides trying to intimidate the Durands to stop testifying to the truth, the Arif/Rice action also included causes of action for Quiet Title and Trespass on certain BLM mining claims. The court found in favor of Arif even though Arif did not have legal title to the mining claims on which the quiet title action was based and the statute of limitations had run on the Trespass cause of action.

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[1] The Durands sold ten (10) claims to Michael Woods in 2004 and ten (10) claims to GEM Green Earth Minerals, Inc. in 2007 and retained ten (10) claims in their own name.

30. The presiding judge of the Lassen County Superior Court, Judge Stephen Bradbury, had a pecuniary interest in the outcome of the case since he was part of a business deal with Arif/Rice. Judge Bradbury recused himself from the case.

31. Arif's original attorney, Bert Guerra, quit the case when he found out his clients, Arif and Rice, had no legal title to the mining claims involved in the case and they had committed perjury. Arif's second attorney was Craig Kellison, Judge Bradbury's former law partner and trustee on Judge Bradbury's Family Trust. (Population of Lassen Co. in 2000 = 33,828)

32. Subsequently several judges were assigned to the case. The second judge, Superior Court Judge Guy Martin Young (retired), after making rulings in Durands' favor, was removed. The next judge assigned to the case was another Susanville judge with close ties to Mr. Kellison and Judge Bradbury so the Durands filed a peremptory challenge against that judge. The third judge, Superior Court Judge Noel Watkins, only appeared at one hearing. The fourth judge, Superior Court Judge Thieler (retired) made a ruling in Durands' favor but after a short break in Judge Bradbury's chambers returned to the hearing and immediately reversed his ruling. He was subsequently removed. The last judge assigned to the case was Municipal Court Judge Larry L. Dier from Modoc County. (Population in Modoc County in 2000 = 9,449)

33. The evidence ignored by Municipal Court Judge Dier included but not exclusively, lack of monuments, lack of discovery (attorney admitted Arif/Earthco had no market for the mineral), forged documents, tax defaults, breaks in the chain of title, etc.

34. As shown below Municipal Court Judge Dier, signing the 1999 Judgment as "Judge of the Superior Court," even included a non-party in the 1999 Judgment.

35. Arif transferred title to the claims to his alter ego corporation North American Technical Trading Company (NATTCO), which was suspended twice and finally forfeited on September 1, 2014 by the California Secretary of State and the California State Franchise Tax

Board for non-payment of taxes. All of the Arif/NATTCO claims (Ironcloud, Native American, and R&R) were permanently closed by the BLM in 2009.

36. The principals of Earthco transferred the Ironcloud and Jennifer claims over to their last pump and dump fraud corporation Western Pozzolan, which subsequently went bankrupt and no longer holds any claims and all of the Jennifer claims and the Ironcloud claims were closed in 2012 except for fifteen (15) Ironcloud claims (Ironcloud 11, 12, 13, 14, 21, 22, 23, 24, 25, 32, 35, 36, 37, 38, 49) that Interest Income Partners ("IIP") received after Western Pozzolan went bankrupt.

37. A company called Cal Minerals (now named Geofortis), after business negotiations with the Durands failed, claim jumped certain Sierra Lady Mining Claims. On May 7, 2015 Blair Will, the attorney for Cal Minerals filed the 1999 Judgment with the BLM requesting that the BLM enforce the 1999 Judgment and close the Sierra Lady Mining Claims. Neither Cal Minerals nor anyone involved with Cal Minerals or IIP was a party to the 1999 Lassen County litigation and they do not have standing to have the 1999 Judgment enforced.

38. On September 25, 2015 Cal Minerals and IIP (incorrectly named Income Investment Partners) filed a Motion to Intervene in the *Madelaine Durand, et al.*, appeal with the IBLA. On October 8, 2015 the IBLA Chief Administrative Judge denied the motion stating that neither Cal Minerals nor IIP had adequately shown that they would be adversely affected.

39. The July 30, 2015 BLM Decision to close the Sierra Lady Mining Claims included all thirty (30) Sierra Lady Mining Claims. On August 27, 2015 the BLM removed Sierra Lady No. 164 and Sierra Lady 165 from the July 30, 2015 Decision.

40. The basis for the 2015 BLM Decision, which was upheld by the IBLA in its June 6, 2016 Opinion, was the April 28, 1999 Judgment, which awarded possession of some of the mining claims to Arif and Earthco and some to the Durands. But neither Arif nor Earthco ever

filed the 1999 Judgment with the BLM in order to have the BLM enforce the 1999 Judgment by closing the Sierra Lady Mining Claims.

41. The Plaintiffs have openly, peaceably and continually worked the Sierra Lady Claims and the Arif/Earthco parties acquiesced to the Plaintiffs' possession of the land, as evidenced by the fact that they never filed the 1999 Judgment with the BLM to have the BLM enforce it.

GENERAL ALLEGATIONS

42. The BLM's closure of the Sierra Lady Mining Claims is illegal.

43. This Complaint for Judicial Review involves the fact that the BLM's July 30, 2015 Decision to close the Plaintiffs' Sierra Lady Mining Claims, the BLM's subsequent 2018 closure of the claims, and the IBLA's June 6, 2016 Opinion are in violation of both state and federal law.

44. The Assistant Regional Solicitor for the BLM, Nancy S. Zahedi, admitted that the BLM was unaware of the 1999 Judgment until May 7, 2015 when the attorney for Cal Minerals filed the Judgment with the BLM, which was reiterated by the IBLA. (Exhibit 4, pg. 3-4 & Exhibit 1, 188 IBLA 2)

45. The IBLA's Opinion that the BLM has the authority to close the Sierra Lady Mining Claims was based on the following unsupported arguments: (a) The 1999 Judgment was not a judgment for possession of property. (188 IBLA 4); (b) The BLM's 2015 Decision to close the Sierra Lady Mining Claims was not an enforcement action. (188 IBLA 5); (c) California statute of limitations does not apply to the BLM. (188 IBLA 4&5); (d) The 1999 Judgment is only a declaratory judgment and anyone obtaining a declaratory judgment is not entitled to enforce a judgment that declared his rights. (188 IBLA 5); (e) The Durands were permanently enjoined from entering the Sierra Lady Mining Claims. (188 IBLA 4)(Exhibit 1).

46. The IBLA's Opinion is contrary to law. California's ten (10) year statute of limitations for the possession of property is exceedingly clear. The 1999 Judgment is past the

statute of limitations and the BLM is without authority to close the Sierra Lady Mining Claims. But the BLM and the IBLA stated that the law does not apply to them. (Exhibit 1, 188 IBLA 4)

47. Even with the extensive resources and capabilities of the BLM and the IBLA, neither agency were able to find any case law, opinion, statute or regulation to uphold the decision to close the Sierra Lady Claims sixteen (16) years after the fact. Instead the BLM and the IBLA have fraudulently misquoted case law and have tried to bend the statutes and regulations beyond recognition in order to support their untenable position that the BLM and the IBLA are above the law. The Supreme Court of the United States has stated otherwise.

48. The IBLA's five reasons, all of which are baseless, inadequate, and improper, directly violate the law as will be shown below. As such the BLM's 2015 Decision and the IBLA's 2016 Opinion are arbitrary, capricious, not in accordance with law, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, contrary to constitutional right, power, privilege, or immunity, unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

FIRST CLAIM FOR RELIEF
(APA - Agency Action Is Arbitrary And Capricious, Not In Accordance With The Law, In Excess Of Statutory Limitations, And An Abuse Of Discretion)

49. Plaintiffs incorporate all paragraphs as if fully set forth herein.

50. Because the Arif and Earthco parties never filed the 1999 Judgment regarding the possession of certain mining claims within the 10-year statute of limitations in order to have the BLM enforce the Judgment, the BLM has no right or authority to enforce the Judgment now.

51. The IBLA admitted that miners' rights are only possessory and stated that the 1999 Judgment was for possession of certain mining claims. (Exhibit 1, 188 IBLA 1 & 2) The IBLA also refers to certain IBLA opinions (*Recon Mining Company, Inc.,* 167 IBLA 103, (2005) *Primus Resources, L.C.,* 144 IBLA 364, (1998), *W.W. Allstead,* 58 IBLA 46, (1981), and 30

U.S.C. § 30 (2012)) discussing the miner's right of possession. (Exhibit 1, 188 IBLA 3 fn. 10)

52. However the IBLA wrongly stated on page 4 that the 1999 Judgment was not a judgment for possession of property. (Exhibit 1, 188 IBLA 4) The IBLA cannot have it both ways. These opposite statements demonstrate an irrational disconnect between the law and the facts of this case, and a complete lack of any satisfactory explanation for its actions.

53. The IBLA stated, "Mining Claims: **Possessory Right** . . . BLM has no authority to resolve disputes among rival mining claimants about the **possession of mining claims."** (Exhibit 1, 188 IBLA 1). "In April 1999, the Superior Court of California, County of Lassen, issued a judgment determining the **rights of possession** of . . . mining claims at issue in this appeal." (Exhibit 1, 188 IBLA 2) (Emphasis added)

54. According to Federal Law the only interest that any miner has in a mining claim is a possessory interest since the paramount title to the land in which the mines lie is in the United States. (*See* 30 U.S.C. § 53, "No **possessory action** . . . the **law of possession.**" (Emphasis added); 30 U.S.C. § 26, "Locators' **rights of possession** . . . **right of possession** . . . ." (Emphasis added); 30 U.S.C. § 38, "**evidence of such possession**" (Emphasis added); 30 U.S.C. § 30 "**right of possession;** . . .") (Emphasis added).

55. The 1999 Judgment was titled in part, "[D]etermining Right Of Possession To Mining Claims". (Exhibit 2, pg. 1 of Judgment) The 1999 Judgment stated that Arif, Earthco, and the Durands each had a "possessory interest" in certain claims. (Exhibit 2, pg. 6-10)

56. Mining claims are considered to be real property since they can be sold, transferred, mortgaged, and inherited and are taxable by the state. *Wilbur v. U.S. ex rel. Krushnic,* 280 US 306, 316, 50 S. Ct. 103 (1930).

57. California Code of Civil Procedure § 680.310 states, " 'Property' includes real and personal property and any interest therein".

58. California Code of Civil Procedure § 680.320 states, "'Real property' includes any right in real property, including but not limited to a leasehold interest in real property".

59. California Code of Civil Procedure § 683.020 states, "Except as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a **judgment for possession** or sale **of property**: (a) The judgment may not be enforced. (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease. (c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished." (Emphasis added)

60. In addition as of April 28, 2013 the 10-year Statute of Limitations under California Code of Civil Procedure § 337.5 has also run and the Judgment cannot be revived.

61. The definition of the term "possession" is the same whether in the United States Code dealing with the possession of mining claims [real property] or the California Code of Civil Procedure dealing with the possession of real property.

62. After being presented with the statute of limitations that overrides the BLM Decision, the IBLA stated that the state law does not apply to the BLM. This statement is not in accordance with the law. (Exhibit 1, 188 IBLA 4)

63. The IBLA's Opinion stated that the California Code of Civil Procedure § 683.020, statute of limitations, "does not apply to BLM's decision. [¶] . . . [¶] " . . . Because BLM's decision does not enforce the state court judgment, the California Code of Civil Procedure provision cited by Appellants is inapplicable here". (Exhibit 1, 188 IBLA 4 & 5)

64. The IBLA supported its contention by stating, "The state court judgment was not ' . . . a judgment for possession or sale of property'. . . that require post-judgment enforcement." (Exhibit 1, 188 IBLA 4) This statement is arbitrary and capricious.

65. The 1999 Judgment clearly stated it was for the possession of property and obviously

required post-judgment enforcement since a private party cannot close claims or remove claims from the BLM files and database, only the BLM has the authority to do that, which is proven by the fact that the Sierra Lady Mining Claims were still recognized, respected, and in force until the BLM closed the Sierra Lady Mining Claims without notice in August 2018.

66. Based on evidence received under a FOIA Request, the BLM admitted that the Plaintiffs were in possession and had use of the Sierra Lady Mining Claims between the 1999 Judgment and the IBLA's June 2016 Opinion. (Exhibit 5)

67. In trying to show that the BLM's Decision is not subject to the California statute of limitations for enforcing a judgment for possession of property, the BLM's "[A]nswer to the Statement of Reasons" stated that the BLM's Decision was not enforcing the 1999 Judgment but was based solely on the "legal effect" of the 1999 Judgment. (Exhibit 4, pg. 8)

68. The Black's Law Dictionary, Sixth Edition states, in pertinent part, "Effect, *v.* . . . to bring to pass; to execute; **enforce**; accomplish". (Emphasis added)

69. Black's Law Dictionary, Sixth Edition states, "Enforce. To put into execution; **to cause to take effect; to make effective**; as, **to enforce a particular** law, a writ, a **judgment** . . ." (Emphasis added)

70. The BLM's 2015 Decision is executing, causing to take effect, making effective, enforcing the 1999 Judgment, which is prohibited by the California statute of limitations.

71. The 1999 Judgment has no "legal effect" because the statute of limitations has long since run. The California statute of limitations applies to the agency's actions and the Defendants do not have the authority to enforce the Judgment.

72. The BLM's 2015 Decision and the BLM's August 2018 closing of the Sierra Lady Mining Claims are in direct violation of the law.

73. The IBLA's Opinion upholding the BLM's Decision is arbitrary and capricious, in

excess of the statutory limitations, not in accordance with the law, and an abuse of discretion.

SECOND CLAIM FOR RELIEF
(APA - Agency Action Is Arbitrary And Capricious, Not In Accordance With The Law And An Abuse Of Discretion)

74. Plaintiffs incorporate all paragraphs as if fully set forth herein.

75. The IBLA stated that the state court case was in the nature of a quiet title action or declaratory judgment citing California Code of Civil Procedure §1060 and §760.020(a). (Exhibit 1, 188 IBLA 4 fn. 16)

76. The IBLA acted arbitrarily and capriciously by stating that a declaratory judgment ***cannot*** be enforced. The IBLA, referencing the California case *Williams v. Spence,* fraudulently stated that a plaintiff (such as the Plaintiffs in the present case) is "not entitled to enforce part of a judgment that declared his [their] rights", which was a willful and deliberate disregard of the law and of the facts of the *Williams v. Spence* case. (Exhibit 1, 188 IBLA 5, fn. 20)

77. What *Williams v. Spence* actually stated was that the declaratory judgment between *Williams* and *Spence* did not constitute a money judgment in favor of *Williams* against Quality Films, therefore *Williams* was not entitled to enforce a writ of execution for money against Quality Films. (*Williams v. Spence,* 141 Cal.App.2d 213, 217, 296 P.2d 577 (1956))

78. The IBLA's contention that a declaratory judgment cannot be enforced is a complete perversion of the law.

79. The IBLA also stated, "Judgments that only declare the legal rights of parties, like the one relied upon by BLM here, do not need to be enforced," also referencing the *Williams v. Spence* case. (Exhibit 1, 188 IBLA 5) The IBLA intentionally overlooked the fact that *Spence* in his cross-complaint prayed, "that the court make such orders as would make effective [enforce] its declaration of the rights of the parties and prevent further litigation". (*Williams v. Spence, supra,* 141 Cal.App.2d 213, at pp. 215.)

80. One of the IBLA's main arguments that the California statute of limitations does not apply to the BLM is based on the deliberate misrepresentation of *Williams v. Spence*, (that persons are "not entitled to enforce" declaratory judgments or declaratory judgments "do not need to be enforced") and demonstrates the complete lack of any legal or reasonable argument and is evidence of the IBLA's arbitrary and capricious actions, an abuse of discretion, and an opinion not in accordance with the law.

THIRD CLAIM FOR RELIEF
(APA - Agency Action Is Arbitrary And Capricious, And An Abuse Of Discretion)

81. Plaintiffs incorporate all paragraphs as if fully set forth herein.

82. In trying to defend the extensive amount of time, sixteen (16) years, between the 1999 Judgment and the BLM's 2015 Decision to close the Sierra Lady Mining Claims, the BLM cited *Recon Mining Company, Inc.*, [164 IBLA 103 (2005)], falsely stating that there was an eight (8) year delay between the Nevada court judgment and the BLM closing *Recon's* claims.

83. The BLM's "[R]esponse to Petition to Stay" fraudulently misquoted the *Recon Mining Company, Inc.* by stating, "In a factual pattern remarkably similar to that of the present case (insofar as there was a substantial delay between the issuance of the State Court's Judgment and BLM's Decision), the **legal effect** of the State Court Judgment in invalidating the 137 Recon mining claims as of 1995, notwithstanding the 8-year delay in BLM's issuance of a decision closing out those claims, was clear." (Exhibit 6, pg. 6)(Emphasis added)

84. In the BLM's "[A]nswer to Statement of Reasons", the BLM again fraudulently relies on *Recon* as the basis for the idea that a multiple year delay in giving the "legal effect" (enforcing) a state court judgment is allowed. (Exhibit 4, pg.6)

85. There was no eight (8) year delay in closing the *Recon* claims. The *Recon* case was bifurcated and the **July 28, 1995** court decision dealt only with the part giving Prichard title to the mining claims that he held at that time. That July 28, 1995 partial judgment was never filed

with the BLM in order for the BLM to enforce the decision by closing out *Recon's* mining claims. Subsequently on August 31, 1995 Prichard lost his original claims listed in the July 28, 1995 court decision and he relocated new claims in **November 1995**. On September 16, 2002, after completion of the remaining phase of the action, the court issued its 2002 Judgment quieting title to Prichard's **November 1995 relocated claims.** (Exhibit 7, 167 IBLA 105)

86. The BLM closed the *Recon* mining claims on June 10, 2003 less than 4 months after the Nevada Supreme Court dismissed *Recon's* appeal of the Nevada Court's September 16, 2002 judgment, which was the final adjudication of the quiet title action on Pritchard's November 1995 relocated set of mining claims. (Exhibit 7, 167 IBLA 106)

87. One of the standards for whether the agency's actions are arbitrary and capricious is the reasonableness of the agency's actions. Deliberately misquoting the *Recon Mining Company, Inc.* decision demonstrates a complete lack of validity of its reasoning and is arbitrary and capricious and an abuse of discretion.

FOURTH CLAIM FOR RELIEF
(APA - Agency Action Is Arbitrary And Capricious, An Abuse Of Discretion, And Not In Accordance With The Law)

88. Plaintiffs incorporate all paragraphs as if fully set forth herein.

89. The IBLA wrongly stated that the 1999 Judgment does not require enforcement because, "The state court judgment was not '. . . a judgment for possession . . . of property' that, for example, evicted Appellants from real property . . . which are typically the kinds of actions that require post-judgment enforcement". (Exhibit 1, 188 IBLA 4)

90. Black's Law Dictionary Sixth Edition states: "Eviction. Dispossession by process of law; the act of depriving a person of the possession of land or rental property which he has held or leased."

91. To support the contention that the California statute of limitations is not applicable to

the present case, the IBLA, in footnote 19, refers to the California Civil Procedure Code § 681.010 as if this section is the only provision for enforcing judgments. (Exhibit 1, 188 IBLA 4)

92. Again the IBLA had it wrong. C.C.P. 681.010 starts by stating: "**Except as otherwise provided by statute** . . . ." The introductory clause recognizes that C.C.P. 681.010 does not provide the exclusive means for enforcing all judgments entered in the State of California.

93. The IBLA's misleading statements have no basis in law or fact and demonstrate that the IBLA is incapable of articulating a satisfactory explanation for its Opinion, and the Opinion is arbitrary and capricious, an abuse of discretion, and not in accordance with the law.

FIFTH CLAIM FOR RELIEF
(Agency Action Is In Excess of Statutory Jurisdiction, Authority, or Limitations, Or Short of Statutory Right, Is Arbitrary And Capricious, An Abuse Of Discretion, And Not In Accordance With The Law)

94. Plaintiffs incorporate all paragraphs as if fully set forth herein.

95. The IBLA stated that the 1999 Judgment permanently enjoined the Durands from entering the mining claim area. (Exhibit 1, 188 IBLA 4) Municipal Court Judge Dier did not have jurisdiction to permanently enjoin the Plaintiffs from entering the area so the IBLA/BLM cannot use the injunction as a basis for the 2015 Decision to close the Sierra Lady Claims.

96. California Code of Civil Procedure § 338 states that the statute of limitations for trespass on real property is three (3) years. In 1993 the Durands properly located the Sierra Lady Mining Claims on land open for location. Neither Arif nor Rice had legal title to the mining claims on which they based their trespass cause of action. The statute of limitations for trespass on the area Arif/Rice alleged they owned ran out in 1996. Arif/Rice did not file their lawsuit until 1997 long after the statute of limitations had run. Judge Dier did not have jurisdiction with which to issue a permanent injunction since it was beyond the statute of limitations.

97. The 1999 Judgment also included non-party APC in the injunction. The 1999 Judgment stated that along with the Durands, APC, their "agents, employees, officers,

representatives, and all persons acting in concert or participating with [them] are permanently enjoined . . ." from entering the public lands covered by the Arif/Earthco claims. (Ex. 2, pg. 12)

98. Superior Court Judge Young had dismissed APC from the lawsuit on September 29, 1997, which was reiterated by Superior Court Judge Watkins on March 25, 1998, and on July 9, 1998 Municipal Court Judge Dier himself ruled that APC did not have to answer interrogatories since APC had been dismissed from the case. However even after the Durands reminded Judge Dier that APC had been dismissed and was not a party, Municipal Court Judge Dier, signing the Order as "Judge of the Superior Court", committed malfeasance by refusing to remove APC from the 1999 Judgment and injunction.

99. Municipal Court Judge Dier fraudulently included non-party APC in the 1999 Judgment, ruled that Arif was the sole owner to mining claims R&R No. 25, & 26 even though those claims had been abandoned and closed by the BLM in 1995 and entered an injunction beyond the statute of limitations.

100. The Plaintiffs openly, peaceably and continually worked the Sierra Lady Claims. Arif and Earthco acquiesced to the Plaintiffs' possession and never enforced the injunction.

101. Since the statute of limitations barred the Arif/Rice cause of action for trespass, Municipal Court Judge Dier did not have jurisdiction and the order enjoining the Durands and non-party APC based on trespass was/is void on its face.

102. Additionally an injunction is in personam not in rem and both Arif and Earthco no longer own any property, which means the alleged injunction no longer exists.

103. The IBLA/BLM cannot use a void and/or a non-existent injunction as a basis for closing the Sierra Lady Claims. Any agency action based on the void injunction is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, is arbitrary and capricious and an abuse of discretion, and not in accordance with the law.

SIXTH CLAIMS FOR RELIEF
(Agency Action Is In Excess of Statutory Jurisdiction, Authority, or Limitations, Or Short of Statutory Right, Is Arbitrary And Capricious And An Abuse Of Discretion, And Not In Accordance With The Law)

104. Plaintiffs incorporate all paragraphs as if fully set forth herein.

105. Based on evidence received under a FOIA Request it was found that the BLM listed the Sierra Lady Mining Claims as forfeited. (Exhibit 8)

106. Because enforcing the 1999 Judgment is against the law, the BLM's action closing the Sierra Lady Claims in 2018 is tantamount to a violation of 28 U.S.C. § 2462 forfeiture statute. The statute of limitations under 28 U.S.C. 2462 is five years from the date when the claim first accrued. There is no tolling of the statute of limitations under 28 U.S.C. § 2462.

107. As such the agency's action is in excess of statutory jurisdiction, authority, or limitations, short of statutory right, is arbitrary and capricious, an abuse of discretion, and not in accordance with the law.

SEVENTH CLAIM FOR RELIEF
(APA - Agency Action Is Not In Accordance With The Law And Contrary to Constitutional Right.)

108. Plaintiffs incorporate all paragraphs as if fully set forth herein.

109. Without notice the BLM closed Sierra Lady Claims #103, 105, 106, 107, 108, 109, 113, 116, 120, 123, 126, 129, 133, 136, 144, 147, 157, 158, 159, 160, 161, and 166 on August 17, 2018, and closed Sierra Lady Claims # 101, 102, 104, 117, 145, and 156 on August 27, 2018.

110. The Durands found that the above Sierra Lady Mining Claims had been closed after checking the BLM LR2000 website. On December 18, 2018 Madelaine Durand wrote a letter to the BLM concerning the closure of these claims. The BLM has never responded.

111. The Defendants' actions have wrongfully deprived the Plaintiffs of their valuable rights to the Sierra Lady Mining Claims without due process of law, entitling the Plaintiffs to the relief requested below.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Court:

1. Declare that the IBLA and the BLM decisions are unlawful;
2. Vacate the IBLA's Opinion;
3. Vacate the BLM's Decision;
4. Order the BLM to promptly and properly reinstate the Sierra Lady Claims;
5. Award the Plaintiffs their reasonable costs, including attorneys' fees, incurred in bringing this action;
6. Grant such other and further relief, as this Court deems proper.

Respectfully submitted,

Dated: February 3, 2020

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(775) 345-0141

Edwin Durand, In Pro Se
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(775) 345-0141

GEM Green Earth Minerals, Inc. In Pro Se
geminc@charter.net
P.O. Box 34719
Reno, Nevada 89533
(775) 815-9256

Dated: 30 January, 2020

Michael Woods, In Pro Se
swtdr@yahoo.com
971 Arden Street
Longwood, Florida 32750
(972) 302-1437

EXHIBIT 1

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

703-235-3750 703-235-8349 (fax)

MADELAINE DURAND, *ET AL.*

IBLA 2015-244

Decided June 6, 2016

Appeal from a decision of the California State Office, Bureau of Land Management, declaring unpatented mining claims invalid. CAMC 260374 through CAMC 260379, CAMC 261310 through 261330, and CAMC 261333.

Affirmed; petition for stay denied as moot; motion for reconsideration of motion to intervene denied as moot.

1. Mining Claims: Possessory Right

Competing claims of ownership of mining claims must be resolved by a court of competent jurisdiction. BLM has no authority to resolve disputes among rival mining claimants about the possession of mining claims. A judgment issued by a court of competent jurisdiction that a claimant has no ownership interest in a mining claim and that the claim is invalid is a proper legal basis for a BLM decision that a mining claim is invalid, null, and void as of the date of the judgment.

APPEARANCES: Madelaine Durand, Edwin Durand, GEM Green Earth Minerals, Inc., and Michael Woods, *pro se*, Reno, Nevada; Nancy S. Zahedi, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE RIECHEL

Madelaine Durand, Edwin Durand, GEM Green Earth Minerals, Inc., and Michael Woods (Appellants) appeal and petition to stay the effect of a July 30, 2015, decision of the California State Office of the Bureau of Land Management (BLM) declaring 30 unpatented mining claims invalid. Because the ownership of the claims was determined by a court of competent jurisdiction, we find that BLM properly relied upon the court judgment to determine that Appellants' claims were invalid, and we affirm BLM's decision.

A California Trial Court Invalidated Appellants' Mining Claims

In April 1999, the Superior Court of California, County of Lassen, issued a judgment determining the rights of possession of the 30 placer mining claims at issue in this appeal.[1] The court determined that, as of April 1, 1999, Appellants Madelaine and Edwin Durand owned only 2 of 30 mining claims: Sierra Lady No. 164 and Sierra Lady No. 165.[2] The court determined that the 28 remaining claims at issue--Sierra Lady Nos. 101-109, 113, 116-117, 120, 123, 126, 129, 133, 136, 144-145, 147, 156-161, and 166--were invalid because they were situated on lands subject to previous location by other parties to the litigation.[3]

In 2015, an attorney representing Cal Minerals, Inc., a company holding mining claims and interested in seeking a mineral material sales contract from BLM on land that was subject to Appellants' claims, sent BLM a copy of the state court judgment.[4] Based upon the state court judgment invalidating Appellants' claims, BLM issued a decision declaring all 30 of Appellants' unpatented mining claims "closed" (*i.e.*, invalid, null, and void).[5] BLM subsequently issued a decision excluding 2 of the 30 claims from its previous decision, leaving 28 claims at issue in this appeal.[6] Explaining the delay between the 1999 state court judgment and BLM's 2015 decision, counsel for BLM states that the Bureau was unaware of the private litigation or the state court judgment until it was brought to the agency's attention on May 7, 2015.[7]

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[1] Judgment for Permanent Injunction and Determining Right of Possession to Mining Claims, *Syed M. Arif, et al. v. Edwin Durand, et al.*, Case No. 29224, in the Consolidated Court of the State of California in and for the County of Lassen (Judgment).

[2] *Id.* at 6, ¶ 3 (CAMC 261331 and 261332).

[3] *Id.* at 10-11, ¶ 8 (CAMC 260374-260379, 261310-261330, 261333).

[4] Notice of Motion and Motion to Intervene of [Interest] Income [] Partners, L.P., and Cal Minerals, Inc. at 3 (filed Sept. 25, 2015).

[5] BLM Decision at unpaginated 1 (July 30, 2015); *see also* BLM Handbook H-3830-1, Administration of Mining Claims, Mill Sites, and Tunnel Sites at III-8 (Oct. 15, 2015) ("Once we have determined that a mining claim/site is abandoned and void, null and void, or otherwise forfeited, ... we will close the case record").

[6] BLM Decision (Aug. 27, 2105) (included as Exhibit 5 to Appellant's NOA and Petition for Stay); *see also* BLM Answer to Statement of Reasons (Answer) (filed October 22, 2015) at 2 n. 1.

[7] Answer at 3-4.

Appellants filed a notice of appeal and petition to stay BLM's decision declaring all 30 of Appellants' unpatented mining claims invalid. Because BLM's subsequent decision exempted 2 of the 30 claims from invalidation, we address only the remaining 28 claims in this appeal.

Appellants filed a statement of reasons (SOR) for their appeal, and BLM filed an opposition to the stay and an answer to the SOR. Cal Minerals, Inc. and Income Investment Partners, L.P. filed a motion to intervene, which the Board denied.[8] Cal Minerals and Income Investment Partners seek reconsideration of that denial.[9]

The State Court Judgment Supports BLM's Decision

[1] The issue in this appeal is whether BLM erred in declaring Appellants' 28 mining claims closed as a result of the state court judgment. Under Federal law, competing claims of ownership of mining claims must be resolved by a court of competent jurisdiction.[10] The Department of the Interior has no authority to resolve disputes among rival mining claimants about the possession of mining claims.[11] Accordingly, a judgment issued by a court of competent jurisdiction that a claimant has no ownership interest in a mining claim and that the claim is invalid is a proper legal basis for a BLM decision that a mining claim is invalid, null, and void as of the date of the judgment.[12]

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[8] Order (Oct. 8, 2015)

[9] Notice of Motion and Motion for Reconsideration of Interest Income Partners, LP, and Cal Minerals, Inc. (filed Oct. 16, 2015).

[10] *Recon Mining Company, Inc.*, 167 IBLA 103, 109 (2005); *Primus Resources, L.C.*, 144 IBLA 364, 365 (1998); *W.W. Allstead*, 58 IBLA 46, 48 (1981); *see also* 30 U.S.C. § 30 (2012) (in the context of adverse claims in patent proceedings, "a court of competent jurisdiction ... determine[s] the question of the right of possession").

[11] *Recon Mining Company, Inc.*, 167 IBLA at 109; *Primus Resources, L.C.*, 144 IBLA at 365; *W.W. Allstead*, 58 IBLA at 48.

[12] *See LaRue Burch*, 134 IBLA 329, 333 (1996) ("The findings of a state court on the right of possession are binding on parties to the lawsuit."); *W.W. Allstead*, 58 IBLA 46, 48 (1981) ("the Department is bound not to recognize the claim of the unsuccessful litigant in such actions."); *see also* 30 U.S.C. § 30 ("After such judgment shall have been rendered ... [and] certified by the register to the Director of the Bureau of Land Management, ... a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess.")

In this case, a court of competent jurisdiction issued the judgment determining that Appellants did not possess the 28 mining claims that are the subject of this appeal and consequently declared the claims invalid.[13] Based on this state court judgment, BLM properly determined that Appellants' claims were no longer valid and declared them closed.

Appellants argue that the Board should reverse BLM's decision for several reasons. Appellants' primary argument is that BLM may not "enforce" a judgment that has expired under state law.[14] In support of this argument, Appellants cite the California Code of Civil Procedure, which states that "a money judgment or a judgment for possession or sale of property" may not be enforced "upon the expiration of 10 years after the date of entry."[15] This state law does not apply to BLM's decision.

First, the provisions of the state court judgment that BLM relied upon are not ones that require subsequent enforcement. The state court case was in the nature of a quiet title action or declaratory judgment, declaring the legal rights of the parties to that action.[16] Each enumerated paragraph of the state court judgment declares the rights of the parties to the mining claims.[17] At the end of the state court judgment, the court permanently enjoined Edwin and Madelaine Durand from entering the invalid claims and declared that they "own or possess no right, title, estate, interest or lien, whatsoever, in any of the [28] claims."[18] The state court judgment was not "a money judgment or a judgment for possession or sale of property" that, for example, evicted Appellants from real property or awarded money to compensate for property damage, which are typically the kinds of actions that require post-judgment enforcement.[19]

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[13] Judgment at 10, ¶¶ 7 – 8.
[14] SOR at 3-8.
[15] CAL. CIV. PROC. CODE § 683.020(a) (Deering 2016); SOR at 3-4.
[16] *See* CAL. CIV. PROC. CODE § 1060 ("Any person ... who desires a declaration of his or her rights ... in, over or upon property, ... may... bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises"); CAL. CIV. PROC. CODE § 760.020(a) ("An action may be brought under this chapter [Quiet Title] to establish title against adverse claims to real or personal property or any interest therein."); Judgment (titled "Judgment for Permanent Injunction and Determining Right of Possession to Mining Claims").
[17] *See* Judgment at 2-11, ¶¶ 1-9.
[18] *Id.* at 12.
[19] *See, e.g.,* CAL. CIV. PROC. CODE § 681.010 (provisions for enforcing judgments).

Judgments that only declare the legal rights of parties, like the one relied upon by BLM here, do not need to be enforced.[20]

Second, even if the state court judgment could be enforced, BLM's decision is not an enforcement action. Instead, BLM's decision recognizes the court's declaration of the legal rights of the parties to that action, which bound those parties accordingly.[21] The 1999 state court judgment was effective immediately and terminated Appellants' interest in the mining claims. BLM's 2015 decision only documents that event. Because BLM's decision does not enforce the state court judgment, the California Code of Civil Procedure provision cited by Appellants is inapplicable here.

Appellants also challenge BLM's decision relying on the state court judgment on the basis that the mining claims of the prevailing parties in the state court litigation were invalid and, further, those parties no longer own the claims at issue and therefore cannot enforce the state court judgment.[22] These arguments are not relevant to BLM's decision. As BLM correctly notes, its decision is not contingent upon any competing rights others may have, or may have had in the past, to the claims at issue or conflicting mining claims.[23] BLM's decision addresses only the status of Appellants' claims.

Appellants' remaining arguments center on their belief that the state court judgment was improperly decided. Appellants argue that, because the state court judgment was incorrect, BLM should not give effect to it.[24] As mentioned above, federal law and our precedent make clear that this Board has no authority to determine the question of the right of possession to claims as between rival claimants.[25] Furthermore, the Board does not have jurisdiction to overrule the state court judgment. Consequently, Appellants' argument regarding the propriety of the state court judgment has no bearing on this appeal and does not provide a basis to challenge BLM's decision before this Board.

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[20] *See Williams v. Spence*, 296 P.2d 577 (Cal. App. 2d Dist. 1956) (plaintiff is not entitled to enforce part of a judgment that declared his rights).

[21] *See LaRue Burch*, 134 IBLA 329, 332-33 (1996) ("The findings of a state court on the right of possession are binding on parties to the lawsuit") (citing *Estate of Arthur C. W. Bowen*, 14 IBLA 201, 210, 81 I.D. 30, 33 (1974)); CAL. CIV. PROC. CODE § 764.030 (judgments in quiet title actions bind the parties to the action).

[22] SOR at 8-12, 18-24.

[23] Answer at 7-8.

[24] SOR at 12-18.

[25] *Recon Mining Company, Inc.*, 167 IBLA at 109.

Conclusion

BLM properly relied upon the state court judgment to find Appellants' 28 unpatented mining claims invalid. Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,[26] we deny the appeal and affirm BLM's Decision as modified by the agency on August 27, 2015, to exclude the Sierra Lady No. 164 and Sierra Lady No. 165 claims. We also deny as moot Appellants' petition for stay and the motion of Interest Income Partners, LP, and Cal Minerals, Inc., to reconsider the denial of their motion to intervene.

Silvia M. Riechel
Administrative Judge

I concur:

James F. Roberts
Deputy Chief Administrative Judge

[26] 43 C.F.R. § 4.1.

EXHIBIT 2

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
California State Office
2800 Cottage Way, Suite W1623
Sacramento, CA 95825
www.blm.gov/ca

30 JUL 2015

In Reply Refer to:
CAMC 260374-79
CAMC 261310-33
3830(CA920MD)P

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

DECISION

Edwin W. Durand	:	
Madelaine Durand	:	
Gem Green Earth Minerals, Inc.	:	
P.O. Box 34719	:	
Reno, NV 89533	:	See Attached List of
	:	placer mining claims
Michael Woods	:	
P.O. Box 4719	:	
Reno, NV 89533-4719	:	

Mining Claims Closed Due to Superior Court Judgment

BLM was recently provided a copy of the enclosed Notice of Entry of Judgment in the case of Syed M. Arif et al. v. Edwin Durand et al., Civil Action Case No. 29924, which was filed to adjudicate competing claims of the right to possession for a number of unpatented mining claims located on public land, including the Sierra Lady placer mining claims referenced herein.

On August 20, 1999, the Superior Court of the State of California for the County of Lassen entered a Notice of Entry of Judgment in the case of Syed M. Arif et al. v. Edwin Durand et al., Civil Action Case No. 29924, which enjoined your access to these claims and adjudicated the right of possession to Syed M. Arif and his co-plaintiffs. As a result of this judgment which constituted an adjudication of disputed ownership in unpatented mining claims by a State Court, the Sierra Lady placer mining claims listed herein are declared closed.

You will receive a refund for fees paid after the 1999 judgment. If there is no appeal the refund will be authorized after 30 days.

Appeal Rights

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay (suspension) of the effectiveness of this decision during the time your appeal is being reviewed by the Board pursuant to Part 4, Subpart B, § 4.21 of Title 43, Code of Federal Regulations, the petition for a stay **must** accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Reclamation Requirements

You are required to reclaim all areas disturbed by your activities on lands encompassed by your mining claim(s) and/or site(s). After you complete the reclamation, you must notify the authorized officer of the appropriate surface managing agency so that the authorized officer may conduct a final site inspection and determine whether you may be released from liability. If you fail to reclaim the land to the satisfaction of the authorized officer, the surface management agency may cite you for noncompliance under its surface management regulations.

For land administered by the BLM, if you fail to reclaim the land to the satisfaction of the authorized officer as required in 43 CFR Subpart 3809, BLM will issue an order of

noncompliance under 43 CFR 3809.601(a). If you fail to comply with the noncompliance order, BLM may take further action under 43 CFR 3809.604. Failure to conduct reclamation is a prohibited act that may subject you to criminal penalties. See 43 CFR 3809.605(h) and 43 CFR 3809.700.

If your occupancy has been terminated and you fail to remove structures, material, equipment, and any personal property in accordance with the regulations in 43 CFR 3715.5-1, BLM may dispose of the property. In accordance with 43 CFR 3715.5-2, you will remain liable for the costs BLM incurs in removing and disposing of the property.

If you have any questions, please contact Maria Damitz of this office at 916-978-4381.

Maria Damitz
Ming Law Adjudication Unit
Division of Energy & Minerals

Enclosures

BLM CAMC #	Claim Name	Owners
260374	Sierra Lady No. 101	Durand
260375	Sierra Lady No. 102	"
260376	Sierra Lady No. 104	"
260377	Sierra Lady No. 117	"
260378	Sierra Lady No. 145	"
260379	Sierra Lady No. 156	"
261310	Sierra Lady No. 103	Gem Green
261311	Sierra Lady No. 105	"
261312	Sierra Lady No. 106	"
261313	Sierra Lady No. 107	"
261314	Sierra Lady No. 108	"
261315	Sierra Lady No. 109	"
261316	Sierra Lady No. 113	Durand
261317	Sierra Lady No. 116	"
261318	Sierra Lady No. 120	Woods
261319	Sierra Lady No. 123	"
261320	Sierra Lady No. 126	"
261321	Sierra Lady No. 129	"
261322	Sierra Lady No. 133	"
261323	Sierra Lady No. 136	"
261324	Sierra Lady No. 144	Durand
261325	Sierra Lady No. 147	"
261326	Sierra Lady No. 157	Gem Green
261327	Sierra Lady No. 158	Woods
261328	Sierra Lady No. 159	"
261329	Sierra Lady No. 160	Gem Green
261330	Sierra Lady No. 161	Woods
261331	Sierra Lady No. 164	Durand
261332	Sierra Lady No. 165	"
261333	Sierra Lady No. 166	Woods

MARK T. DAVIS (State Bar No. 127308)
2707 K Street, Suite One
Sacramento, California 95816
(916) 444-8998 (telephone)
(916) 446-8954 (facsimile)

Attorney for Cross-Defendants
VALTEC CAPITAL CORPORATION,
a Nevada Corporation and
EARTHCO, a Nevada Corporation

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LASSEN

SYED M. ARIF, etc., et al.,

Plaintiffs,

v.

EDWIN DURAND, et al.,

Defendants.

Civil Action Case No. 29924

NOTICE OF ENTRY OF JUDGMENT

EDWIN DURAND, et al.,

Cross-Complainants,

v.

SYED M. ARIF, etc., et al.

Cross-Defendants.

TO: **Appearing Parties and their Attorneys of Record:**

Notice is hereby given that on August 20, 1999, judgment was entered in favor of Plaintiffs Syed M. Arif, Norman Rice, North American Trading Technical Company and Cross Defendants Earthco and Valtec Capital Corporation as follows: **See Copy of Judgment Attached**

5/31/99
Date

Mark T. Davis
Attorney for the Cross Defendants, Earthco and Valtec Capital Corporation

Craig M. Kellison, SBN 74621
Law Offices of Craig M. Kellison
60 South Lassen Street
Susanville, CA 96130
(916) 257-5555

Attorney for Plaintiffs and Cross-Defendants

ENDORSED-FILED

APR 2 8 1999

LASSEN COUNTY SUPERIOR COURT
R. REED, CHIEF ADMIN. OFFICER

By Suzanne Faulkner Deputy

IN THE CONSOLIDATED COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LASSEN

* * * *

SYED M. ARIF, individually and dba NORTH AMERICAN TECHNICAL TRADING CO., and NORMAN F. RICE, an individual,

Plaintiffs,

v.

EDWIN DURAND, an individual, and AMERICAN POZZOLAN CORP.,

Defendants.

CASE NO. 29224

JUDGMENT FOR PERMANENT INJUNCTION AND DETERMINING RIGHT OF POSSESSION TO MINING CLAIMS

EDWIN DURAND, an Individual, and AMERICAN POZZOLAN CORP., a Nevada Corporation,

Counterclaimants,

v.

SYED M. ARIF, Individually and dba NORTH AMERICAN TECHNICAL TRADING CO., aka MATTCO and NORTH AMERICAN TECHNICAL TRADING CO. (INC. of ILLINOIS, 11-26-96 and of CALIFORNIA 1-17-97), and NORMAN F. RICE, GLORIA M. RICE, CLIFFORD S. RICE; individually and dba NORMAN RICE ENTERPRISES, INC., a Nevada corporation 12-18-96, and Agent Mr. ARTHUR KOFFINKE, an individual; JERRY W. SLUSSER, an individual, dba VALTEC CAPITAL CORPORATION & EARTHCO, both Nevada Corporations (California & Indian Registered); JOAN K. SCHUG, Treasurer; ARCHIE ALBRIGHT,

Secretary, of VALTEC; & BYRON BARTHOLF, an individual & California Licensed General Building Contractor dba BARTCO, ROBERT R. SWINNEY, an individual, JAMES W. SCOTT, an individual aka J.W. SCOTT COMPANY, INC., a Nevada Corporation, MATTHEW G. HUNTLEY, ESQ.; and ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN OR INTEREST IN THE MINING CLAIMS PROPERTY DESCRIBED AS THE SIERRA LADY ASSOCIATED PLACER MINING CLAIMS ADVERSE TO THE CROSS-COMPLAINANTS TITLE and DOES 1-100.

Cross-Defendants.

This cause came on regularly for trial without jury in November, 1998, the Honorable Larry L. Dier, Judge, presiding. Plaintiffs and Cross-Defendants, Syed M. Arif, North American Technical Trading Co, an Illinois corporation, Norman F. Rice, Gloria M. Rice, Clifford S. Rice, Norman Rice Enterprises, Inc., a Nevada corporation, and Matthew Huntley, appeared by Craig M. Kellison, counsel; Defendants Edwin Durand and Madelaine Durand, husband and wife, and American Pozzolan Corp., a Nevada corporation, appeared in propria persona; and Cross-Defendants Jerry W. Slusser, Valtec Capital Corporation, a Nevada corporation, and Earthco, a Nevada corporation, appeared by Mark Davis, counsel. Oral and documentary evidence was presented by all parties; the cause was argued and submitted for a decision. A Statement of Decision has been requested.

NOW, THEREFORE, IT IS ADJUDGED, ORDERED, AND DECREED that:

1. As of April 1, 1999, Plaintiff and Cross-Defendant Syed M. Arif [Arif] was and is the sole owner of the following mining claims.

Claim Name	Section	Description	Township	Range	CAMC-BLM#
Iron Cloud No. 1	1	N 1/2 NE 1/4	23N	17E	232333
Iron Cloud No. 2	1	SE 1/4 NE 1/4	23N	17E	232334
Iron Cloud No. 3	1	E 1/2 SE 1/4	23N	17E	232335
Iron Cloud No. 4	1	N 1/2 SW 1/4	23N	17E	232336
Iron Cloud No. 6	12	NE 1/4	23N	17E	232338
Iron Cloud No. 7	12	NE 1/4 NW 1/4	23N	17E	232339
Iron Cloud No. 8	12	S 1/2 NW 1/4	23N	17E	232340
Iron Cloud No. 9	12	SE 1/4	23N	17E	232341
Iron Cloud No. 10	12	SW 1/4	23N	17E	232342
Iron Cloud No. 15	1	N 1/2 NE 1/4	23N	17E	232347
Iron Cloud No. 16	13	NW 1/4	23N	17E	232348
Iron Cloud No. 17	13	SE 1/4	23N	17E	232349
Iron Cloud No. 18	13	SW 1/4	23N	17E	232350
Iron Cloud No. 19	14	S 1/2 NE 1/4	23N	17E	232351
Iron Cloud No. 20	14	E 1/2 SE 1/4	23N	17E	232352
Iron Cloud No. 28	24	NE 1/4	23N	17E	232360
Iron Cloud No. 29	24	NW 1/4	23N	17E	232361
Iron Cloud No. 30	24	SE 1/4	23N	17E	232362
Iron Cloud No. 31	24	SW 1/4	23N	17E	232363
Iron Cloud No. 42	25	NE 1/4	23N	17E	232374
Iron Cloud No. 43	25	N 1/2 SE 1/2	23N	17E	232375
Iron Cloud No. 44	25	SE 1/4 SE 1/4	23N	17E	232376
Iron Cloud No. 45	25	NW 1/4	23N	17E	232377
Native American No. 1	1	S 1/2 SW 1/4	23N	17E	252914
Native American No. 2	2	SW 1/4 SE 1/4	23N	17E	252915
Native American No. 3	11	N ½ NE½ NE¼	23N	17E	252916
Native American No. 4	12	NW ¼ NW ¼	23N	17E	252917
Native American No. 5	11	SE 1/4 NE 1/4	23N	17E	252918
Native American No. 6	11	E 1/2 SE 1/4	23N	17E	252919
Native American No. 7	14	NE 1/4 NW 1/4	23N	17E	252920
Native American No. 8	14	N 1/2 NE 1/4	23N	17E	252921
R&R No. 1	31	NW 1/4	24N	18E	52652
R&R No. 2	31	NE 1/4	24N	18E	52653

R&R No. 3	31	SW 1/4	24N	18E	52654
R&R No. 4	31	SE 1/4	24N	18E	52655
R&R No. 5	6	NW 1/4	23N	18E	52656
R&R No. 6	6	NE 1/4	23N	18E	52657
R&R No. 7	6	SW 1/4	23N	18E	52658
R&R No. 8	6	SE 1/4	23N	18E	52659
R&R No. 9	7	NW 1/4	23N	18E	52660
R&R No. 10	7	SW 1/4	23N	18E	52661
R&R No. 11	18	NW 1/4	23N	18E	52662
R&R No. 13	18	SW 1/4	23N	18E	52663
R&R No. 15	19	NW 1/4	23N	18E	52664
R&R No. 17	19	SW 1/4	23N	18E	52665
R&R No. 19	30	NW 1/4	23N	18E	52666
R&R No. 20	30	SW 1/4	23N	18E	52667
R&R No. 21	31	NW 1/4	23N	18E	52668
R&R No. 22	31	SW 1/4	23N	18E	52669
R&R No. 23	6	NW 1/4	22N	18E	52670
R&R No. 24	6	SW 1/4	22N	18E	52671
R&R No. 25	7	NE 1/4	23N	18E	52672
R&R No. 26	7	SE 1/4	23N	18E	52673

2. As of April 1, 1999, Cross-Defendant Eartheo was and is the sole owner of the following unpatented mining claims.

Claim Name	Section	Description	Township	Range	CAMC-BLM#
Ironcloud #5	2	SE1/4SE1/4	23N	17 E MDBM	232337
Ironcloud #11	11	SW1/4NE1/4	23N	17 E MDBM	232343
Ironcloud #12	11	W1/2SE1/4	23N	17 E MDBM	232344
Ironcloud #13	11	S1/2SW1/4	23N	17 E MDBM	232345
Ironcloud #14	10	SE1/4SE1/4	23N	17 E MDBM	232346
Ironcloud #21	14	W1/2NW1/4	23N	17 E MDBM	232353
Ironcloud #22	14	W1/2SW1/4	23N	17 E MDBM	232354
Ironcloud #23	14	SE1/4SW1/4	23N	17 E MDBM	232355
Ironcloud #24	15	SE1/4NE1/4	23N	17 E MDBM	232356
Ironcloud #25	15	E1/2SE1/4	23N	17 E MDBM	232357
Ironcloud #26	15	SE1/2NW1/4	23N	17 E MDBM	232358

1	Ironcloud #27	15	SW1/4	23 N	17 E MDBM 232359
2	Ironcloud #32	23	SW1/4NE1/4	23 N	17 E MDBM 232364
3	Ironcloud #33	23	NW1/4SE1/4	23 N	17 E MDBM 232365
	Ironcloud #34	23	S1/2SE1/4	23 N	17 E MDBM 232366
4	Ironcloud #35	23	NW1/4	23 N	17 E MDBM 232367
5	Ironcloud #36	23	SW1/4	23 N	17 E MDBM 232368
6	Ironcloud #37	22	NE1/4NE1/4	23 N	17 E MDBM 232369
	Ironcloud #38	22	S1/2NE1/4	23 N	17 E MDBM 232370
7	Ironcloud #39	22	NW1/4	23 N	17 E MDBM 232371
8	Ironcloud #40	22	SE I/4	23 N	17 E MDBM 232372
9	Ironcloud #41	22	SW1/4	23 N	17 E MDBM 232373
	Ironcloud #46	26	N1/2NE1/4	23 N	17 E MDBM 232378
10	Ironcloud #47	26	SW1/2NE1/4	23 N	17 E MDBM 232379
11	Ironcloud #48	26	W1/2SE1/4	23 N	17 E MDBM 232380
12	Ironcloud #49	26	NW1/4	23 N	17 E MDBM 232381
	Ironcloud #50	26	SW1/4	23 N	17 E MDBM 232382
13	Ironcloud #51	27	NE1/4	23 N	17 E MDBM 232383
14	Ironcloud #52	27	SE1/4	23 N	17 E MDBM 232384
15	Ironcloud #53	27	NI/4	23 N	17 E MDBM 232385
	Ironcloud #54	27	N1/2 SW1/4	23 N	17 E MDBM 232386
16	Ironcloud #55	27	SE1/4 SW1/4	23 N	17 E MDBM 232387
17	Ironcloud #56	35	NE1/4	23 N	17 E MDBM 232388
18	Ironcloud #57	35	NW1/4	23 N	17 E MDBM 232388
	Ironcloud #58	35	SE1/4	23 N	17 E MDBM 232390
19	Ironcloud #59	35	SW1/4	23 N	17 E MDBM 232391
20	Ironcloud #60	34	NE1/4	23 N	17 E MDBM 232392
	Ironcloud #61	34	EI/2NW1/4	23 N	17 E MDBM 232393
21	Ironcloud #62	34	NE1/4SW1/4	23 N	17 E MDBM 232394
22	Ironcloud #63	34	N1/2SE1/4	23 N	17 E MDBM 232395
23	Ironcloud #64	34	SE1/4SE1/4	23 N	17 E MDBM 232396
	Jennifer #1	2	SW¼NW¼	23 N	17 E MDBM 249712
24	Jennifer #2	2	NW1/4SW1/4	23 N	17 E MDBM 249713
25	Jennifer #3	10	NW1/4SW1/4	23 N	17 E MDBM 249714
26	Jennifer #4	21	NE1/4NE1/4	23 N	17 E MDBM 249715
	Jennifer #5	21	S1/2NE1/4	23 N	17 E MDBM 249716
27	Jennifer #6	21	NI/2SW1/4	23 N	17 E MDBM 249717
28	Jennifer #7	21	SE1/4SE1/4	23 N	17 E MDBM 249718

Jennifer #8	28	E1/2NE1/4	23 N	17 E MDBM	249719
Jennifer #9	28	NE1/4SE 1/4	23 N	17 E MDBM	249720
Jennifer #10	23	E1/2NE1/4	23 N	17 E MDBM	249721
Jennifer #11	3	E1/2SE1/4	23 N	17 E MDBM	249722
Jennifer #12	2	NW1/4	22 N	17 E MDBM	249723
Jennifer #13	2	NE1/4	22 N	17 E MDBM	249724
Jennifer #14	2	SW1/4	22 N	17 E MDBM	249725
Jennifer #15	2	SE1/4	22 N	17 E MDBM	249726
Jennifer #16	1	NW1/4	22 N	17 E MDBM	249727
Jennifer #17	1	NE1/4	22 N	17 E MDBM	249728
Jennifer #18	1	SW1/4	22 N	17 E MDBM	249729
Jennifer #19	1	SE1/4	22 N	17 E MDBM	249730

3. As of April 1, 1999, Defendants Edwin Durand and Madelaine Durand, husband and wife, were and are the sole owners of the following unpatented mining claims:

Claim Name	Section	Description	Township	Range	CAMC-BLM#
Sierra Lady No. 164	23	*SE1/4SE1/2	23N	17E MDBM	261331
Sierra Lady No. 165	26	*NE1/4NE1/4	23N	17E MDBM	26132

*Lying to the East of U.S. Highway 395.

4. That as an owner to said unpatented mining claims, Arif possesses the following "possessory interest" to the following portions of real property located in an unincorporated area of Lassen County, California.

Section	Description	Township	Range
1	N 1/2 NE 1/4	23N	17E
1	SE 1/4 NE 1/4	23N	17E
1	E 1/2 SE 1/4	23N	17E
1	N 1/2 SW 1/4	23N	17E
12	NE 1/4	23N	17E
12	NE 1/4 NW 1/4	23N	17E
12	S 1/2 NW 1/4	23N	17E
12	SE 1/4	23N	17E
12	SW 1/4	23N	17E

1	N 1/2 NE 1/4	23N	17E
13	NW 1/4	23N	17E
13	SE 1/4	23N	17E
13	SW 1/4	23N	17E
14	S 1/2 NE 1/4	23N	17E
14	E 1/2 SE 1/4	23N	17E
24	NE 1/4	23N	17E
24	NW 1/4	23N	17E
24	SE 1/4	23N	17E
24	SW 1/4	23N	17E
25	NE 1/4	23N	17E
25	N 1/2 SE 1/2	23N	17E
25	SE 1/4 SE 1/4	23N	17E
25	NW 1/4	23N	17E
1	S 1/2 SW 1/4	23N	17E
2	SW 1/4 SE 1/4	23N	17E
12	NW ¼ NW ¼	23N	17E
11	SE 1/4 NE 1/4	23N	17E
11	E 1/2 SE 1/4	23N	17E
14	NE 1/4 NW 1/4	23N	17E
14	N 1/2 NE 1/4	23N	17E
31	NW 1/4	24N	18E
31	NE 1/4	24N	18E
31	SW 1/4	24N	18E
31	SE 1/4	24N	18E
6	NW 1/4	23N	18E
6	NE 1/4	23N	18E
6	SW 1/4	23N	18E
6	SE 1/4	23N	18E
7	NW 1/4	23N	18E
7	SW 1/4	23N	18E
18	NW 1/4	23N	18E
18	SW 1/4	23N	18E
19	NW 1/4	23N	18E
19	SW 1/4	23N	18E
30	NW 1/4	23N	18E
30	SW 1/4	23N	18E

31	NW 1/4	23N	18E
31	SW 1/4	23N	18E
6	NW 1/4	22N	18E
6	SW 1/4	22N	18E
7	NE1/4	23N	18E
7	SE1/4	23N	18E

5. That as an owner to said unpatented mining claims, Earthco possesses the following "possessory interest" to the following portions of real property located in an unincorporated area of Lassen County, California.

Claim Name	Section	Description	Township	Range	CAMC-BLM#
Ironcloud #5	2	SE1/4SE1/4	23N	17 E MDBM	232337
Ironcloud #11	11	SW1/4NE1/4	23N	17 E MDBM	232343
Ironcloud #12	11	W1/2SE1/4	23N	17 E MDBM	232344
Ironcloud #13	11	S1/2SW1/4	23N	17 E MDBM	232345
Ironcloud #14	10	SE1/4SE1/4	23N	17 E MDBM	232346
Ironcloud #21	14	W1/2NW1/4	23N	17 E MDBM	232353
Ironcloud #22	14	W1/2SW1/4	23N	17 E MDBM	232354
Ironcloud #23	14	SE1/4SW1/4	23N	17 E MDBM	232355
Ironcloud #24	15	SE1/4NE1/4	23N	17 E MDBM	232356
Ironcloud #25	15	E1/2SE1/4	23N	17 E MDBM	232357
Ironcloud #26	15	SE1/2NW1/4	23N	17 E MDBM	232358
Ironcloud #27	15	SW1/4	23 N	17 E MDBM	232359
Ironcloud #32	23	SW1/4NE1/4	23 N	17 E MDBM	232364
Ironcloud #33	23	NW1/4SE1/4	23 N	17 E MDBM	232365
Ironcloud #34	23	S1/2SE1/4	23 N	17 E MDBM	232366
Ironcloud #35	23	NW1/4	23 N	17 E MDBM	232367
Ironcloud #36	23	SW1/4	23 N	17 E MDBM	232368
Ironcloud #37	22	NE1/4NE1/4	23 N	17 E MDBM	232369
Ironcloud #38	22	S1/2NE1/4	23 N	17 E MDBM	232370
Ironcloud #39	22	NW1/4	23 N	17 E MDBM	232371
Ironcloud #40	22	SE 1/4	23 N	17 E MDBM	232372
Ironcloud #41	22	SW1/4	23 N	17 E MDBM	232373
Ironcloud #46	26	N1/2NE1/4	23 N	17 E MDBM	232378

1	Ironcloud #47	26	SW1/2NE1/4	23 N	17 E MDBM	232379
2	Ironcloud #48	26	W1/2SE1/4	23 N	17 E MDBM	232380
3	Ironcloud #49	26	NW1/4	23 N	17 E MDBM	232381
	Ironcloud #50	26	SW1/4	23 N	17 E MDBM	232382
4	Ironcloud #51	27	NE1/4	23 N	17 E MDBM	232383
5	Ironcloud #52	27	SE1/4	23 N	17 E MDBM	232384
6	Ironcloud #53	27	N1/4	23 N	17 E MDBM	232385
	Ironcloud #54	27	N1/2 SW1/4	23 N	17 E MDBM	232386
7	Ironcloud #55	27	SE1/4 SW1/4	23 N	17 E MDBM	232387
8	Ironcloud #56	35	NE1/4	23 N	17 E MDBM	232388
9	Ironcloud #57	35	NW1/4	23 N	17 E MDBM	232388
	Ironcloud #58	35	SE1/4	23 N	17 E MDBM	232390
10	Ironcloud #59	35	SW1/4	23 N	17 E MDBM	232391
11	Ironcloud #60	34	NE1/4	23 N	17 E MDBM	232392
	Ironcloud #61	34	E1/2NW1/4	23 N	17 E MDBM	232393
12	Ironcloud #62	34	NE1/4SW1/4	23 N	17 E MDBM	232394
13	Ironcloud #63	34	N1/2SE1/4	23 N	17 E MDBM	232395
14	Ironcloud #64	34	SE1/4SE1/4	23 N	17 E MDBM	232396
	Jennifer #1	2	SW¼NW¼	23 N	17 E MDBM	249712
15	Jennifer #2	2	NW1/4SW1/4	23 N	17 E MDBM	249713
16	Jennifer #3	10	NW1/4SW1/4	23 N	17 E MDBM	249714
17	Jennifer #4	21	NE1/4NE1/4	23 N	17 E MDBM	249715
	Jennifer #5	21	S1/2NE1/4	23 N	17 E MDBM	249716
18	Jennifer #6	21	N1/2SW1/4	23 N	17 E MDBM	249717
19	Jennifer #7	21	SE1/4SE1/4	23 N	17 E MDBM	249718
20	Jennifer #8	28	E1/2NE1/4	23 N	17 E MDBM	249719
	Jennifer #9	28	NE1/4SE 1/4	23 N	17 E MDBM	249720
21	Jennifer #10	23	E1/2NE1/4	23 N	17 E MDBM	249721
22	Jennifer #11	3	E1/2SE1/4	23 N	17 E MDBM	249722
23	Jennifer #12	2	NW1/4	22 N	17 E MDBM	249723
	Jennifer #13	2	NE1/4	22 N	17 E MDBM	249724
24	Jennifer #14	2	SW1/4	22 N	17 E MDBM	249725
25	Jennifer #15	2	SE1/4	22 N	17 E MDBM	249726
26	Jennifer #16	1	NW1/4	22 N	17 E MDBM	249727
	Jennifer #17	1	NE1/4	22 N	17 E MDBM	249728
27	Jennifer #18	1	SW1/4	22 N	17 E MDBM	249729
28	Jennifer #19	1	SE1/4	22 N	17 E MDBM	249730

6. That was an owner to said unpatented mining claims, Edwin Durand and Madelaine Durand, husband and wife, possess the following "possessory interest" to the following portions of real property located in an unincorporated are of Lassen County, California.

Section	Description	Township	Range
23	SE1/4SE1/2	23N	17E MDBM
26	NE1/4NE1/4	23N	17E MDBM

7. That the Defendants and Cross-Complainants, Edwin Durand and Madelaine Durand, husband and wife, and American Pozzolan Corp., a Nevada corporation, collectively referred to herein as "Durand", have no right, title or interest, including and possessory interest in and to those claims described in Paragraphs 1 and 2, above, or to those portions of real property described in Paragraphs 4 and 5, above.

8. That so far as the Durand's possess any mining claims that are situated on any of the above portions of real property described in Paragraphs 4 and 5, above, said claims are of no affect and invalid as to the claims of Arif and Earthco. The Court determines that these claims are situated on lands subject to the previous location by Arif, and his predecessors in interest, and are of no further force and effect. Specifically, the Court finds the following Sierra Lady Claims are invalid.

Claim Name	CAMC-BLM#
Sierra Lady No. 144	261324
Sierra Lady No. 145	260378
Sierra Lady No. 147	261325
Sierra Lady No. 156	260378
Sierra Lady No. 157	261326
Sierra Lady No. 117	260377
Sierra Lady No. 104	260376

Sierra Lady No. 102	260375
Sierra Lady No. 101	260374
Sierra Lady No. 166	261333
Sierra Lady No. 165	261332
Sierra Lady No. 164	261331
Sierra Lady No. 161	261330
Sierra Lady No. 160	261329
Sierra Lady No. 159	261328
Sierra Lady No. 158	261327
Sierra Lady No. 136	261323
Sierra Lady No. 133	261322
Sierra Lady No. 129	261321
Sierra Lady No. 126	261320
Sierra Lady No. 123	261319
Sierra Lady No. 120	261318
Sierra Lady No. 116	261317
Sierra Lady No. 113	261316
Sierra Lady No. 109	261315
Sierra Lady No. 108	261314
Sierra Lady No. 107	261313
Sierra Lady No. 106	261312
Sierra Lady No. 105	261311
Sierra Lady No. 103	261310

9. The Court further finds that as of April 1, 1999, Arif is the sole owner in fee simple title to that certain real property located in an unincorporated area of Lassen County, California, and more specifically described in Exhibit "A".

IT IS HEREBY ORDERED that Edwin Durand, Madelaine Durand, American Pozzolan Corp., a Nevada corporation, their agents, employees, officers, representatives, and all persons acting in concert or participating with said Defendants are permanently enjoined and restrained from engaging in, committing, or performing, directly or indirectly, by any means whatsoever, any of the following acts:

a) Entering, for whatever reason, the real property described in Exhibit "A" attached hereto;

b) Entering upon any or all of the mining claims described in Paragraphs 1 and 2 above, including, the real property comprising said claims described in Paragraphs 4 and 5.

The Defendants, Edward Durand, Madelaine Durand, husband and wife, and American Pozzolan Corp., a Nevada corporation, herein own or possess no right, title, estate, interest or lien, whatsoever, in any of the claims described in Paragraphs 2 and 3, above, and to the real property described in Paragraphs 4 and 5; and the real property described in Exhibit "A".

Plaintiffs and Cross-Defendants have and recover their costs ~~in the sum of $~~ to be assessed F.C. ~~from Defendants.~~ Pursuant to Rule 54.

Dated: April 23, 1999.

Larry L. Dier
Judge of the Superior Court

BOOK 635 PAGE 158

LEGAL DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE COUNTY OF LASSEN, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

IN TOWNSHIP 24 NORTH, RANGE 17 EAST, MOUNT DIABLO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

SECTION 13: THE E1/2 OF THE NW1/4; THE NE1/4 OF THE SW1/4; AND THE W1/2 OF THE E1/2.

EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA RECORDED MAY 3, 1968 IN BOOK 221 OF OFFICIAL RECORDS AT PAGE 378.

ALSO EXCEPTING THEREFROM A STRIP OF LAND, 100 FEET IN WIDTH, AS DESCRIBED IN THE JUDGEMENT OF CONDEMNATION IN FAVOR OF CHARLES MORAN, ET AL, RECORDED FEBRUARY 8, 1888 IN BOOK F OF DEEDS AT PAGE 326.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING WESTERLY OF THE EASTERLY LINE OF THE WESTERN PACIFIC RAILROAD AND THAT PORTION LYING EASTERLY OF THE WESTERLY LINE OF U.S. HIGHWAY 395, AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA RECORDED SEPTEMBER 22, 1933 IN BOOK 30 OF DEEDS AT PAGE 246.

SECTION 24: LOTS 2, 3 AND 4; THE W1/2 OF THE E1/2; THE E1/2 OF THE NW1/4; AND THE NE1/4 OF THE SW1/4.

EXCEPTING THEREFROM A STRIP OF LAND 100 FEET IN WIDTH AS DESCRIBED IN THE JUDGEMENT OF CONDEMNATION IN FAVOR OF CHARLES MORAN, ET AL. RECORDED FEBRUARY 8, 1888, IN BOOK F OF DEEDS AT PAGE 326.

ALSO EXCEPTING THEREFROM A STRIP OF LAND 100 FEET IN WIDTH AS DESCRIBED IN THE DEED TO WESTERN PACIFIC RAILWAY COMPANY RECORDED APRIL 10, 1905, IN BOOK P OF DEEDS AT PAGE 214.

ALSO EXCEPTING THEREFROM A STRIP OF LAND 200 FEET IN WIDTH AS DESCRIBED IN THE DEED TO WESTERN PACIFIC RAILWAY COMPANY RECORDED FEBRUARY 8, 1906, IN BOOK P OF DEEDS AT PAGE 432.

ALSO EXCEPTING THEREFROM PARCELS 1 AND 2 AS DESCRIBED IN THE DEED TO ERWIN J. HINTZ RECORDED SEPTEMBER 13, 1967, IN BOOK 216 OF OFFICIAL RECORDS AT PAGE 472.

SECTION 25: LOTS 1, 2, 3 AND 4; AND THE W1/2 OF THE SW1/4.

SECTION 26: THE S1/2 OF THE SE1/4.

SECTION 34: THE E1/2 OF THE SE1/4; AND THE SW1/4 OF THE SE1/4.

EXCEPTING FROM THE NE1/4 OF THE SE1/4; AND THE SW1/4 OF THE SE1/4, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO FRED E. GALEPPI, RECORDED MAY 11, 1982, IN BOOK 401 OF OFFICIAL RECORDS, AT PAGE 521.

SECTION 35: THE W1/2 OF THE SW1/4.

SECTION 36: THE SW1/4 OF THE NE1/4; THE SE1/4 OF THE NW1/4; THE E1/2 OF THE SW1/4; AND SW1/4 OF THE SW1/4.

EXHIBIT "A"

Page 1

(Continued)

EXHIBIT "A"

EXCEPTING THEREFROM A STRIP OF LAND 150 FEET IN WIDTH ... ESCRIBED IN THE DEED TO WESTERN PACIFIC RAILWAY COMPANY, RECORDED MARCH 15, 1905, IN BOOK P OF DEEDS, AT PAGE 159.

IN TOWNSHIP 23 NORTH, RANGE 17 EAST, MOUNT DIABLO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

SECTION 1: LOTS 1 AND 2; THE S1/2 OF THE NW1/4; THE SW1/4 OF THE NE1/4; THE W1/2 OF THE SE1/4; AND THE S1/2 OF THE SW1/4.

EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED SEPTEMBER 4, 1926, IN BOOK 18 OF DEEDS, AT PAGE 189.

ALSO EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 10, 1992 IN BOOK 560 AT PAGE 500 OF OFFICIAL RECORDS.

ALSO EXCEPTING FROM THE S1/2 OF THE SW1/4, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO CHARLES A. GALEPPI, RECORDED APRIL 7, 1941, IN BOOK 39 OF DEEDS, AT PAGE 472.

SECTION 2: LOTS 1, 2, 3 AND 4; THE SE1/4 OF THE NW1/4; THE S1/2 OF THE NE1/4; THE N1/2 OF THE SE1/4; THE SW1/4 OF THE SE1/4; THE E1/2 OF THE SW1/4; AND THE SW1/4 OF THE SW1/4.

EXCEPTING FROM THE SW1/4 OF THE SW1/4, ALL THAT PORTION THEREOF LYING SOUTHERLY AND EASTERLY OF THE NORTHWESTERLY LINE OF THE STRIP OF LAND 100 FEET IN WIDTH CONVEYED TO WESTERN PACIFIC RAILWAY COMPANY BY DEED RECORDED JUNE 6, 1905, IN BOOK P OF DEEDS, AT PAGE 341.

EXCEPTING FROM THE SW1/4 OF THE SE1/4, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO CHARLES A. GALEPPI, RECORDED APRIL 7, 1941, IN BOOK 39 OF DEEDS, AT PAGE 472.

ALSO EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 10, 1992 IN BOOK 560 AT PAGE 500 OF OFFICIAL RECORDS.

SECTION 3: LOTS 1 AND 2; THE S1/2 OF THE NE1/4; AND THE SE1/4.

EXCEPTING FROM LOT 2; THE SE1/4 OF THE NE1/4; AND THE S1/2 OF THE SE1/4, ALL THE COAL AND OTHER MINERALS IN SAID LANDS AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO FRED E. GALEPPI, RECORDED MAY 11, 1982, IN BOOK 401 OF OFFICIAL RECORDS, AT PAGE 521.

SECTION 10: THE N1/2 OF THE NE1/4.

EXCEPTING THEREFROM, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO FRED E. GALEPPI, RECORDED MAY 11, 1982, IN BOOK 401 OF OFFICIAL RECORDS, AT PAGE 521.

SECTION 11: THE E1/2 OF THE E1/2; AND THE NW1/4 OF THE NE1/4.

EXCEPTING THEREFROM, ALL THE COAL AND OTHER MINERALS IN SAID LAND, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME, AS CONTAINED IN THE

(Continued)

PATENT FROM THE UNITED STATES OF AMERICA TO CHARLES A. GALEPPI, RECORDED APRIL 7, 1941, IN BOOK 39 OF DEEDS, AT PAGE 472.

ALSO EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 11, 1941, IN BOOK 40 OF DEEDS, AT PAGE 160.

ALSO EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 10, 1992 IN BOOK 560 AT PAGE 500 OF OFFICIAL RECORDS.

SECTION 12: THE NW1/4 OF THE NW1/4.

EXCEPTING THEREFROM, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME, AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA, TO CHARLES A. GALEPPI, RECORDED APRIL 7, 1941, IN BOOK 39 OF DEEDS AT PAGE 472.

SECTION 14: THE N1/2 OF THE NE1/4; THE E1/2 OF THE NW1/4; THE NE1/4 OF THE SW1/4; AND THE W1/2 OF THE SE1/4..

ALSO EXCEPTING THEREFROM THE PARCEL DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED AUGUST 10, 1992 IN BOOK 560 AT PAGE 500 OF OFFICIAL RECORDS

EXCEPTING FROM THE N1/2 OF THE NE1/4; AND THE NE1/4 OF THE NW1/4, ALL THE COAL AND OTHER MINERALS IN SAID LAND, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO CHARLES A. GALEPPI, RECORDED APRIL 7, 1941, IN BOOK 39 OF DEEDS, AT PAGE 472.

SECTION 15: THE SW1/4 OF THE NE1/4; AND THE W1/2 OF THE SE1/4..

EXCEPTING THEREFROM, ALL THE COAL AND OTHER MINERALS IN SAID LANDS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME, AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA TO THE HEIRS OF ARTHUR PAUL PENSA, RECORDED MAY 11, 1982, IN BOOK 401 OF OFFICIAL RECORDS, AT PAGE 527.

SECTION 22: THE NW 1/4 OF THE NE 1/4.

EXCEPTING THEREFROM ALL THE COAL AND OTHER MINERALS, IN SAID LANDS TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS CONTAINED IN THE PATENT FROM THE UNITED STATES OF AMERICA, TO THE HEIRS OF ARTHUR PAUL PENSA RECORDED MAY 11, 1982, IN BOOK 401 OF OFFICIAL RECORDS, AT PAGE 527.

EXHIBIT 3

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
California State Office
2800 Cottage Way, Suite W1623
Sacramento, CA 95825
www.blm.gov/ca

August 27, 2015

In Reply Refer to:
CAMC 260374-79
CAMC 261310-33
3830(CA920MD)P

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

DECISION

Edwin W. Durand	:	
Madelaine Durand	:	Sierra Lady No. 164 (CAMC 261331)
P.O. Box 34719	:	Sierra Lady No. 165 (CAMC 261332)
Reno, NV 89533	:	placer mining claims

Sierra Lady No. 164 and Sierra Lady 165 Vacated from Decision of July 30, 2015

Sierra Lady No. 164 (CAMC 261331) and Sierra Lady No. 165 (CAMC 261332) placer mining claims are vacated from the Decision of July 30, 2015.

Although the Judgment found that Edwin Durand and Madelaine Durand, were and are the sole owners of the Sierra Lady No. 164 and Sierra Lady No. 165 unpatented mining claims, they were mistakenly included in the range of serial numbers listed above in the July 30, 2015, Decision.

If you have any questions, please contact Maria Damitz of this office at 916-978-4381.

Maria Damitz
Mining Law Adjudication Unit
Division of Energy & Minerals

cc: Michael Woods
P.O. Box 4719
Reno, NV 89533-4719

EXHIBIT 4

CLEMENTINE JOSEPHSON
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NANCY S. ZAHEDI
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Pacific Southwest Region
2800 Cottage Way, Room E-1712
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Attorney for the Bureau of Land Management

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

Madelaine Durand, et al. Appellants vs. Bureau of Land Management Respondent.	IBLA 2015-244 Appeal from BLM Decision dated July 30, 2015, Closing the Sierra Lady Mining Claims Due to Superior Court Judgment

BLM ANSWER TO STATEMENT OF REASONS

On September 4, 2015, the Bureau of Land Management's ("BLM") received Appellants' appeal and petition for stay from BLM's July 30, 2015, Decision ("BLM Decision") closing the Sierra Lady mining claims based on a Judgment by the Superior Court of the State of California for the County of Lassen that adjudicated the right of possession to unpatented mining claims as between private parties. On September 22, 2015, BLM filed its response and opposition to

Appellant's petition for stay. On October 5, 2015, BLM received Appellant's Statement of Reasons. BLM hereby submits its answer to the statement of reasons.

I. BACKGROUND

This appeal implicates the status of twenty-eight (28)[1] mining claims that were the subject of litigation and disputed ownership in the Superior Court of the State of California.

A. Mining Claims

The mining claimants for the twenty-eight mining claims at issue in this appeal are shown on the BLM's records as either Edwin and Madelaine Durand, Gem Green Earth Minerals, Inc., or Michael Woods. These mining claimants timely paid all maintenance fees and/or filed Small Miner Waivers through the present date.[2]

B. State Court Litigation

BLM's review of a 1999 Judgment indicates that Syed M. Arif, individually and doing business as North American Technical Trading Co., and Norman F. Rice brought a legal action in the Superior Court of the State of California for the County of Lassen ("Superior Court") against Edwin and Madelaine Durand and American Pozzolan Corporation, seeking a permanent injunction and determination of right of possession to a large number of mining claims. See Judgment dated April 23, 1999, Sayed M. Arif et al. v. Edwin Durand et al., Case No. 29224

[1] Although the July 30, 2015, Decision closed thirty (30) Sierra Lady claims, on August 27, 2015, BLM vacated the Sierra Lady No. 164 and Sierra Lady No. 165 from the July 30, 2015, Decision, leaving twenty-eight claims that are at issue in this appeal.

[2] In compiling the case file for this appeal, BLM identified that Small Miner Waivers were filed by Gem Green Earth Minerals, Inc. (Madelaine Durand, President) and by Madelaine and Edwin Durand for 10 Sierra Lady mining claims respectively for the 2016 maintenance fee year. Because an initial review suggests that Gem Green Earth Minerals, Inc. and the Durands are likely to be related parties, if BLM's Decision were to be reversed by the Board, BLM will need to determine whether the Small Miner Waivers were improperly filed for the 2016 maintenance fee year or any prior years. See 43 C.F.R. §§ 3830.5 (defining "Related Parties") and 3835.1 ("all related parties must hold no more than a total of 10 mining claims and sites nationwide" to qualify for waiver).

("Judgment"). The relevant portions of the Superior Court Judgment for this appeal with respect to the Sierra Lady placer mining claims are the following provisions:

> 3. That as of April 1, 1999, Defendants Edwin Durand and Madelaine Durand, husband and wife, were and are the sole owners of the following unpatented claims: [Sierra Lady No. 164 and Sierra Lady No. 165, lying to the East of U.S. Highway 395].
>
> . . .
>
> 8. That so far as the Durand's [sic] possess any mining claims that are situated on any of the above portions of real property described in Paragraphs 4 and 5, above, said claims are of no affect and invalid as to the claims of Arif and Earthco. *The Court determines that these claims* are situated on lands subject to the previous location by Arif, and his predecessors in interest, and *are of no further force and effect. Specifically, the Court finds the following Sierra Lady Claims are invalid* [listing the thirty Sierra Lady unpatented mining claims subject to the BLM's July 30, 2015, Decision, including the Sierra Lady No. 164 and Sierra Lady No. 165 listed in the Judgment as being owned by the Durands].

Judgment at 6 and 10-11 (emphasis added).

The Superior Court also permanently enjoined and restrained Edwin Durand, Madelaine Durand, American Pozzolan, their agents, employees, officers, representatives, and all persons acting in concert or participating with said Defendants, from entering real property where claims were adjudicated to Plaintiffs and ruled that:

> The Defendants, Edward [sic] Durand, Madelaine Durand, husband and wife, and American Pozzolan Corp., a Nevada corporation, herein own or possess no right, title, estate, interest or lien, whatsoever, in any of the claims described in Paragraphs 2 and 3 above, and to the real property described in Paragraphs 4 and 5; and the real property described in Exhibit "A".

Judgment at 12.

C. BLM Issuance of Mining Claim Closure Decision

BLM was not aware of the private litigation affecting the Sierra Lady Claims or that the Superior Court issued a Judgment dated April 23, 1999 invalidating those claims, until it was

contacted by an attorney on behalf of his client on May 7, 2015. See Blair Will e-mail dated May 7, 2015 (which included an attachment of the 1999 Judgment). The issue of the status of the Sierra Lady mining claims was apparently brought to BLM's attention in 2015 because a company (Cal Minerals) is seeking a mineral materials disposal sales contract from BLM, which requires a waiver from holders of unpatented mining claims. Id. Cal Minerals contended in communications with the BLM, that it is the holder of the relevant unpatented mining claims, based on a transfer to it of unpatented mining claims adjudicated by the 1999 Superior Court Judgment, and that BLM's database (LR2000) showing Durands' Sierra Lady mining claims was in error.

BLM reviewed the August 20, 1999, Notice of Entry of Judgment in the Sayed M. Arif et al. v. Edwin Durand et al., litigation in State Court, which adjudicated competing claims to the right to possession for unpatented mining claims on public lands between private parties. This review revealed that the Superior Court declared the Sierra Lady mining claims held by the Durands in 1999 to be "invalid." Based on this Judgment resolving a dispute between private parties as to rights in unpatented mining claims, BLM issued a decision on July 30, 2015, closing the Sierra Lady mining claims that were invalidated by the Superior Court in 1999. See BLM Decision.

II. RESPONSE TO STATEMENT OF REASONS

Appellant advances several arguments in their statement of reasons. First, Appellants argue that BLM erroneously closed the Sierra Lady mining claims because the 1999 Judgment issued by the Superior Court has expired and BLM therefore cannot enforce the Judgment. See Statement of Reasons at 3-8. Second, Appellants argue that BLM's Decision is improper

because the plaintiffs in the State Court litigation no longer hold the claims that were at issue in that litigation. Id. at 2, 18-24. Finally, Appellants argue that the 1999 Judgment was improperly decided and therefore should not be given effect. Id. at 12-18. However, none of these arguments affect the legal status of Appellants' claims, which became invalid upon issuance of the 1999 Judgment.

A. BLM is Not Enforcing an Expired State Court Judgment

Notwithstanding Appellants' allegations that BLM's decision constitutes enforcement of a State Court Judgment, see Statement of Reasons at 3-8, BLM is not "enforcing" a State Court Judgment in 2015. Instead, BLM has merely rectified its records to reflect that *as of the date of the 1999 Judgment*, the Durands no longer had any right, title or interest in the Sierra Lady mining claims. See Judgment at 10-11.

Appellants characterize the Superior Court Judgment as adjudicating a right of possession and argue that because more than 10 years have elapsed since the Judgment was issued, the Judgment is now unenforceable by the BLM. See Statement of Reasons at 3-5. Appellants, however, fail to address the fact that the Superior Court held their Sierra Lady claims to be invalid. See Judgment at 10-11. As a result, *as of the date of the Superior Court Judgment*, Appellants' mining claims became invalid by operation of law, notwithstanding the fact that BLM was not informed of that judgment. Just as BLM updates its records to reflect the transfer of mining claim ownership when quitclaim deeds are submitted to the agency (in some cases many years after the actual transfer occurred), so too BLM's Decision issued on July 30, 2015, does nothing more than update BLM's records to reflect a State Court action (the invalidation of

Appellants' mining claims) that actually occurred in 1999.[3] Appellants disagree that this is the case, see Statement of Reasons at 7, but provides no basis for this position other than to repeat Appellants' view that updating BLM's records is essentially the same as "enforcing" a Judgment.

This Board has held that BLM "has no authority to determine the question of the right of possession to claims as between rival claimants; rather, the proper method for resolving such private party disputes is through a suit filed in court of competent jurisdiction." Recon Mining Company, Inc., 164 IBLA 103, 109 (2005) (citing to Primus Resources, L.C., 144 IBLA 364, 365 (1998) and W.W. Allstead, 58 IBLA 46, 48 (1981)). In the Recon case, BLM issued a decision on June 10, 2003 closing 137 mining claims based on a 1995 State Court Judgment divesting Recon of any rights in those claims. Id. at 106. In a factual pattern similar to that of the present case (insofar as there was a substantial delay between the issuance of the State Court's Judgment and BLM's Decision), the legal effect of the State Court Judgment in invalidating the 137 Recon mining claims as of September 1990 was clear. Id. at 105-106. The only question in the Recon appeal was whether BLM was required to reimburse Recon's maintenance fee payments it made dating back to 1990, as a result of the 1995 State Court Judgment invalidating those claims, where BLM did not issue a decision to close those claims until 2003.[4] Id. at 106-107. Although Appellants try to distinguish the Recon case on the basis that there were subsequent appeals of the 1995 State Court Judgment that were not fully resolved until 2003, see Statement of Reasons

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[3] Because the mining claims were invalid as of April 1999, the July 30, 2015, Decision states that Appellants will receive a refund for fees paid after the 1999 judgment. This is because Appellants' mining claims were void by operation of law as of that date. If BLM were merely "enforcing" a Judgment as of 2015, Appellants would not be entitled to a refund of fees dating back to 1999. Under Appellants' theory, BLM's decision is the action that voids their claims, whereas in actuality it was the 1999 Judgment that operated to void those claims. See 43 C.F.R. § 3830.22(b)(2) ("BLM will refund maintenance and location fees if: . . . [a]t the time you paid the fees, the mining claim or site was void.").

[4] In the present case, BLM acknowledges that Appellants are entitled to a refund of any maintenance fees paid after

at 6-7, Appellants do not dispute that the 1995 Judgment was in effect pending those appeals,[5] or that the 1995 Judgment was not filed with BLM until shortly before it issued BLM issued its decision to close the claims that were the subject of that Judgment. Id. Appellants' attempts to distinguish the Recon case are unavailing and do not support Appellants' legal arguments.

Because BLM is bound by the Superior Court's adjudication of mining claim ownership rights as between private parties, BLM does not have the discretionary authority to modify or ignore the Superior Court Judgment. The Superior Court Judgment clearly states that Appellants' Sierra Lady mining claims were "invalid" as of April, 1999. For this reason, Appellants cannot show that BLM's decision is in error.

B. The Status of Other Parties' Mining Claim Holdings is Irrelevant

Appellants challenge BLM's Decision on the basis that plaintiffs in the 1999 State Court litigation no longer own any of the mining claims listed in the 1999 Judgment. Id. at 2, 18-24. The status of any claims other than the Sierra Lady claims are irrelevant for purposes of this appeal. BLM's decision is limited to the closure of the Sierra Lady mining claims based on the 1999 State Court Judgment ruling that the Sierra Lady claims were invalid. See BLM Decision at 1.

The status of other claims that may have once been located on the same public lands as the Sierra Lady mining claims has no bearing on the legal status of the Sierra Lady claims. BLM's decision is not contingent on whether or not there are any other valid claims on these

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the 1999 Judgment invalidated their claims.

[5] Although Appellants characterize the proceedings after the 1995 Judgment as appeals from the court's finding that Recon had no right, title or interest in the claims, it is not clear that the 2002 Judgment was an appeal from the 1995 Judgment. As noted by the Board, "Nothing in the record indicates that the 1995 Judgment, which explicitly stated that it was a final judgment on the merits (1995 Judgment at 2), was stayed or otherwise rendered ineffective *pending*

public lands. Instead, BLM's decision is based solely on the legal effect of the 1999 Judgment, which invalidated the Sierra Lady claims as of the date the judgment issued. Appellants' discussions of the Arif and Earthco claims that were resolved in the 1999 Judgment is a red herring that has no bearing on BLM's decision.

Appellants' assertions that "adverse parties," e.g., the plaintiffs in the 1999 state court litigation, cannot enforce the 1999 Judgment, see Statement of Reasons at 8-10, are similarly without merit. Appellants are challenging BLM's decision, which is based on BLM's determination that the 1999 Judgment invalidated Appellants' Sierra Lady claims as of the date the judgment was issued. See BLM Decision. BLM's decision does not depend on any purported rights that Earthco, Arif or CalMinerals may or may not currently have, and as a result, Appellants' discussion of the history of those parties' mining claim holdings or current corporate status is irrelevant to resolution of this appeal.

C. The Board Lacks Jurisdiction to Consider Claims that the 1999 State Court Judgment Was Incorrectly Decided

Appellants further challenge BLM's decision on the basis that BLM is giving effect to a 1999 Judgment that Appellants' argue was improper, if not fraudulent. See Statement of Reasons at 12-18. This challenge is misguided as Appellants are essentially requesting that the Board overturn the 1999 Judgment. If Appellants believed the judgment was wrongly decided, then Appellants had the opportunity to seek reconsideration or to appeal the judgment to a State appellate court, which steps the docket indicates they pursued. See Statement of Reasons, Exhibit 2 (indicating filing of motion or relief from judgment on 10/25/99 and filing of notice of

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resolution of the second phase of the litigation. The second phase did not revisit the determination that Recon's claims were invalid as of Sept. 24, 1990. . ." Recon, 164 IBLA at 105, n.3 (emphasis added).

appeal on 4/13/00). Appellants were not successful in overturning the 1999 Judgment and cannot request that the Board now do so. The Board lacks jurisdiction to overturn a State Court Judgment and Appellants' request that it do so is improper.

III. CONCLUSION

For the reasons stated above, BLM requests that the Board affirm BLM's July 30, 2015, Decision.

Dated this 22nd day of October, 2015.

Respectfully submitted,

Nancy S. Zahedi
Assistant Regional Solicitor

CERTIFICATE OF SERVICE

RE: Madelaine Durand, et al., v. Bureau of Land Management; IBLA 2015-244

I, the undersigned, declare that:

I am a citizen of the United States, over the age of eighteen, and not a part of this litigation. On October 22, 2015, I served the

"BLM ANSWER TO STATEMENT OF REASONS"

by placing a true copy enclosed in a sealed envelope via U. S. Postal Service certified mail and electronic transmission (e-mail) Sacramento, California as follows:

United States Department of Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, Virginia 22203
Email: ibla@oha.doi.gov

by placing a true copy enclosed in a sealed envelope via U.S. Postal Service certified mail and facsimile at Sacramento, California, addressed as follows:

Madelaine or Edwin Durand
P.O. Box 34719-4719
Reno, Nevada 89533
Fax: 775-345-0309

I certify under penalty of perjury that the foregoing is true and correct. Executed on the 22nd day of October 2015, at Sacramento, California.

James Hines
Administrative Assistant

EXHIBIT 5

[Quoted text hidden]

Santillan, Sonia <ssantill@blm.gov>
To: "Damitz, Maria" <mdamitz@blm.gov>
Cc: Debra Marsh <dmarsh@blm.gov>

Thu, Jul 14, 2016 at 4:10 AM

I wish Nancy hadn't said anything about a refund. The claimants new about the court decision and still paid the fees and had use of the claims during those years. I would not have refunded unless they asked for a refund but still wouldn't have agreed they deserved a refund.

Sonia I. Santillan
Mineral Leasing Specialist
Mining Claims National Data Steward
WO-320 Division of Solid Minerals
(202) 912-7123 (Office)
(703) 691-3542 (Telework)
(202) 912-7199 FAX

"There can be no real and abiding happiness without sacrifice. Our greatest joys do not result from our efforts toward self-gratification, but from a loving and spontaneous service to other lives. Joy comes not to him who seeks it for himself, but to him who seeks it for other people." – H. W. Sylvester

[Quoted text hidden]

Damitz, Maria <mdamitz@blm.gov>

Fri, Jul 15, 2016 at 1:10 PM

EXHIBIT 6

CLEMENTINE JOSEPHSON
Regional Solicitor
NANCY S. ZAHEDI
Assistant Regional Solicitor
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Attorney for the Bureau of Land Management

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

Madelaine Durand, et al. Appellants vs. Bureau of Land Management Respondent.	IBLA 2015-244 Appeal from BLM Decision dated July 30, 2015, Closing the Sierra Lady Mining Claims Due to Superior Court Judgment

BLM RESPONSE TO PETITION FOR STAY

On September 4, 2015, the Bureau of Land Management's ("BLM") received Appellant's appeal and petition for stay from BLM's July 30, 2015, Decision ("BLM Decision") closing the Sierra Lady mining claims based on a Judgment by the Superior Court of the State of California for the County of Lassen that adjudicated the right of possession to unpatented mining claims as between private parties.

I. BACKGROUND

This appeal implicates the status of twenty-eight (28)[1] mining claims that were the subject of litigation and disputed ownership in the Superior Court of the State of California.

A. Mining Claims

The mining claimants for the twenty-eight mining claims at issue in this appeal are shown on the BLM's records as either Edwin and Madelaine Durand, Gem Green Earth Minerals, Inc., or Michael Woods. These mining claimants timely paid all maintenance fees and/or filed Small Miner Waivers through the present date.[2]

B. State Court Litigation

Based on a reading of a 1999 Judgment, Syed M. Arif, individually and doing business as North American Technical Trading Co., and Norman F. Rice brought a legal action in the Superior Court of the State of California for the County of Lassen ("Superior Court") against Edwin and Madelaine Durand and American Pozzolan Corporation, seeking a permanent injunction and determination of right of possession to a large number of mining claims. See Judgment dated April 23, 1999, Sayed M. Arif et al. v. Edwin Durand et al., Case No. 29224 ("Judgment"). The relevant portions of the Superior Court Judgment for this appeal with respect to the Sierra Lady placer mining claims are the following provisions:

---

[1] Although the July 30, 2015, Decision closed thirty (30) Sierra Lady claims, on August 27, 2015, BLM vacated the Sierra Lady No. 164 and Sierra Lady No. 165 from the July 30, 2015, Decision, leaving twenty-eight claims that are at issue in this appeal.

[2] In compiling the case file for this appeal, BLM identified that Small Miner Waivers were filed by Gem Green Earth Minerals, Inc. (Madelaine Durand, President) and by Madelaine and Edwin Durand for 10 Sierra Lady mining claims respectively for the 2016 maintenance fee year. Because an initial review suggests that Gem Green Earth Minerals, Inc. and the Durands are likely to be related parties, if BLM's Decision were to be reversed by the Board, BLM will need to determine whether the Small Miner Waivers were improperly filed for the 2016 maintenance fee year or any prior years. See 43 C.F.R. §§ 3830.5 (defining "Related Parties") and 3835.1 ("all related parties must hold no more than a total of 10 mining claims and sites nationwide" to qualify for waiver).

> 3. That as of April 1, 1999, Defendants Edwin Durand and Madelaine Durand, husband and wife, were and are the sole owners of the following unpatented claims: [Sierra Lady No. 164 and Sierra Lady No. 165, lying to the East of U.S. Highway 395].
>
> . . .
>
> 8. That so far as the Durand's [sic] possess any mining claims that are situated on any of the above portions of real property described in Paragraphs 4 and 5, above, said claims are of no affect and invalid as to the claims of Arif and Earthco. *The Court determines that these claims* are situated on lands subject to the previous location by Arif, and his predecessors in interest, and *are of no further force and effect. Specifically, the Court finds the following Sierra Lady Claims are invalid* [listing the thirty Sierra Lady unpatented mining claims subject to the BLM's July 30, 2015, Decision, including the Sierra Lady No. 164 and Sierra Lady No. 165 listed in the Judgment as being owned by the Durands].

Judgment at 6 and 10-11 (emphasis added).

The Superior Court also permanently enjoined and restrained Edwin Durand, Madelaine Durand, American Pozzolan, their agents, employees, officers, representatives, and all persons acting in concert or participating with said Defendants, from entering real property where claims were adjudicated to Plaintiffs and ruled that:

> The Defendants, Edward [sic] Durand, Madelaine Durand, husband and wife, and American Pozzolan Corp., a Nevada corporation, herein own or possess no right, title, estate, interest or lien, whatsoever, in any of the claims described in Paragraphs 2 and 3 above, and to the real property described in Paragraphs 4 and 5; and the real property described in Exhibit "A".

Judgment at 12.

(1) BLM Issuance of Mining Claim Closure Decision

BLM was not aware of the litigation or Superior Court's Judgment dated April 23, 1999, until it was contacted by an attorney on behalf of his client on May 7, 2015. See Blair Will e-mail dated May 7, 2015 (which included an attachment of the 1999 Judgment). BLM received a copy of a post-trial brief from the litigation, but was informed that according to the Superior

Court clerk, other filings and trial exhibits had been destroyed. See Blair Will e-mail dated May 8, 2015. The issue of the status of the Sierra Lady mining claims was apparently brought to BLM's attention in 2015 because a company (Cal Minerals) is seeking a mineral materials disposal sales contract from BLM, which requires a waiver from holders of unpatented mining claims. Id. Cal Minerals contended in communications with the BLM, that it is the holder of the relevant unpatented mining claims, based on a transfer to it of unpatented mining claims adjudicated by the 1999 Superior Court Judgment, and that BLM's database (LR2000) showing Durands' Sierra Lady mining claims was in error.

BLM reviewed the August 20, 1999, Notice of Entry of Judgment in the Sayed M. Arif et al. v. Edwin Durand et al., litigation in State Court, which adjudicated competing claims to the right to possession for unpatented mining claims on public lands between private parties. This review revealed that the Superior Court declared the Sierra Lady mining claims held by the Durands in 1999 to be "invalid." Based on this Judgment resolving a dispute between private parties as to rights in unpatented mining claims, BLM issued a decision on July 30, 2015, closing the Sierra Lady mining claims that were invalidated by the Superior Court in 1999. See BLM Decision.

II. RESPONSE TO STAY PETITION

An appellant seeking a stay from the Board must show justification based on the following standards:

(i) The relative harm to the parties if the stay is granted or denied.
(ii) The likelihood of the appellant's success on the merits.
(iii) The likelihood of immediate and irreparable harm if the stay is not granted, and
(iv) Whether the public interest favors granting the stay.

43 C.F.R. § 4.21(b)(1). The appellant bears the burden of proof to show that a stay is warranted. 43 C.F.R. § 4.21(b)(2).

A. Appellant Is Unlikely to Prevail on the Merits

Appellant argues that BLM erroneously closed the Sierra Lady mining claims because the 1999 Judgment issued by the Superior Court has expired and can no longer be enforced. See Stay Petition at 3-5. However, BLM is not "enforcing" a State Court Judgment in 2015. Instead, BLM has merely rectified its records to reflect that *as of the date of the 1999 Judgment*, the Durands no longer had any right, title or interest in the Sierra Lady mining claims. See Judgment at 10-11.

Appellants characterize the Superior Court Judgment as adjudicating a right of possession and argue that because more than 10 years has passed, the Judgment is now unenforceable. See Stay Petition at 3-5. Appellants, however, fail to address the fact that the Superior Court held their Sierra Lady claims to be invalid. See Judgment at 10-11. As a result, *as of the date of the Superior Court Judgment*, Appellants' mining claims became invalid, notwithstanding the fact that BLM was not informed of that judgment. Just as BLM updates its records to reflect the transfer of mining claim ownership when quitclaim deeds are submitted to the agency (in some cases many years after the actual transfer occurred), so too BLM's Decision issued on July 30, 2015, does nothing more than update of BLM's records to reflect a State Court action (the invalidation of Appellants' mining claims) that actually occurred in 1999.[3]

This Board has held that BLM "has no authority to determine the question of the right of

[3] Because the mining claims were invalid as of April 1999, the July 30, 2015, Decision states that Appellants will receive a refund for fees paid after the 1999 judgment, because Appellants did not have any valid claims after that date. If BLM were merely "enforcing" a Judgment as of 2015, Appellants would not be entitled to a refund of fees

possession to claims as between rival claimants; rather, the proper method for resolving such private party disputes is through a suit filed in court of competent jurisdiction." Recon Mining Company, Inc., 164 IBLA 103, 109 (2005) (citing to Primus Resources, L.C., 144 IBLA 364, 365 (1998) and W.W. Allstead, 58 IBLA 46, 48 (1981)). In the Recon case, BLM issued a decision on June 10, 2003 closing 137 mining claims based on a 1995 State Court Judgment divesting Recon of any rights in those claims. Id. at 106. In a factual pattern remarkably similar to that of the present case (insofar as there was a substantial delay between the issuance of the State Court's Judgment and BLM's Decision), the legal effect of the State Court Judgment in invalidating the 137 Recon mining claims as of 1995, notwithstanding the 8-year delay in BLM's issuance of a decision closing out those claims, was clear. The only question in the Recon appeal was whether BLM was required to reimburse Recon's maintenance fee payments made after the 1995 State Court Judgment where BLM did not issue a decision to close those claims until 2003.[4]

Because BLM is bound by the Superior Court's adjudication of mining claim ownership rights as between private parties, BLM does not have the discretionary authority to modify or ignore the Superior Court Judgment. The Superior Court Judgment clearly states that Appellants' Sierra Lady mining claims were "invalid" as of April, 1999. For this reason, Appellants cannot meet their burden of proof to demonstrate that a stay is warranted and cannot show that BLM's decision is in error.

III. CONCLUSION

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dating back to 1999.

[4] In the present case, BLM acknowledges that Appellants are entitled to a refund of any maintenance fees paid after the 1999 Judgment invalidated their claims.

For the reasons stated above, BLM requests that the Board deny Appellant's petition for stay and affirm BLM's July 30, 2015, Decision.

Dated this 22nd day of September, 2015.

Respectfully submitted,

Nancy S. Zahedi
Assistant Regional Solicitor

CERTIFICATE OF SERVICE

RE: Madelaine Durand, et al., v. Bureau of Land Management; IBLA 2015-244

I, the undersigned, declare that:

I am a citizen of the United States, over the age of eighteen, and not a part of this litigation. On September 22, 2015, I served the

"BLM RESPONSE TO PETITION FOR STAY"

by placing a true copy enclosed in a sealed envelope via U. S. Postal Service certified mail and electronic transmission (e-mail) Sacramento, California as follows:

United States Department of Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, Virginia 22203
Email: ibla@oha.doi.gov

by placing a true copy enclosed in a sealed envelope via U.S. Postal Service certified mail and facsimile at Sacramento, California, addressed as follows:

Madelaine or Edwin Durand
P.O. Box 34719-4719
Reno, Nevada 89533
Fax: 775-345-0309

I certify under penalty of perjury that the foregoing is true and correct. Executed on the 22nd day of September 2015, at Sacramento, California.

James Hines
Administrative Assistant

EXHIBIT 7

RECON MINING COMPANY, INC.

IBLA 2003-291 Decided October 6, 2005

Appeal from a decision of the Nevada State Office, Bureau of Land Management, denying a request for refund of claim payments. NMC 605257 et al.

Affirmed in part; reversed in part; set aside and remanded in part.

1. Accounts: Refunds--Mining Claims: Rental or Claim Maintenance Fees: Generally--Mining Claims: Title

Under 43 CFR 3833.1-1 (2003), maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited. Since the Department has no jurisdiction to determine questions regarding the right of possession between rival claimants, the ruling of a state court of competent jurisdiction that a claimant has no ownership interest in various mining claims constitutes a determination that the claimant's claims are null and void. A BLM decision denying a requested refund of the claim maintenance fees paid on the voided claims will be reversed as to the fees paid subsequent to the date of the court's ruling. BLM's decision denying the requested refund of fees paid before the date of the court's ruling will be set aside and remanded to BLM for further analysis where the record contains conflicting evidence of BLM's interpretation of and practice under the applicable regulation.

2. Accounts: Refunds--Mining Claims: Rental or Claim Maintenance Fees: Generally

A BLM denial of a request for interest on a refund of claim maintenance and other fees and charges will be affirmed because, absent a statutory provision authorizing the payment of interest, no interest may be paid by the Government on such refunds.

APPEARANCES: William G. Rogers, Esq., Dayton, Nevada, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

Recon Mining Company, Inc. (Recon), [1/] has appealed the portion of a June 10, 2003, decision of the Nevada State Office, Bureau of Land Management (BLM), denying its request for a refund of the claim payments it remitted to BLM between September 1990 and February 2003, for 137 mining claims (NMC 605257-605330, 605489-605490, and 605856-605916), plus interest. Recon does not appeal the part of the decision closing those claims on the official BLM records.

In 1986 and 1987, Recon located 108 lode mining claims in T. 36 N., R. 19 E., Washoe County, Nevada. See SOR, Ex. B. Recon failed to file timely either notices of intention to hold the mining claims or affidavits of assessment work prior to December 31, 1989, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (2000), and BLM declared those claims abandoned and void pursuant to 43 U.S.C. § 1744(c) (2000). See SOR at 2; see also SOR, Ex. L, Recon Mining Company, Inc. v. Prichard, CV92-1403, Second Judicial District Court, State of Nevada (Special Master's Decision and Recommendation May 4, 1995) (Special Master's Decision), at 4.

On July 16, 1990, James C. Prichard located 27 claims corresponding exactly to 27 of Recon's abandoned claims. (Special Master's Decision at 4.) Prichard located claims coincident to the remainder of the abandoned claims on September 20, 1990. Id. at 7; see also SOR, Ex. N, Recon Mining Company, Inc. v. Prichard, CV92-01403, Second Judicial District Court, State of Nevada (Findings of Fact, Conclusions of Law, and Judgment Sept. 18, 2002) (2002 Judgment), at 4. According to the location notices in the case file, Recon similarly relocated all the

[1/] Recon is owned by John E. Spencer and has also been known as Spencer Mining. See Statement of Standing and Reasons for Appeal (SOR) at 2.

abandoned claims on September 20, 1990. See also Special Master's Decision at 5-6. On March 6, 1992, Recon filed an action in Nevada state court seeking to quiet title to the mining claims. See 2002 Judgment at 1; see also Special Master's Decision at 1. Prichard failed to pay the 1993/1994 claim maintenance fees for his claims required by 30 U.S.C. § 28f (2000), and the claims were forfeited by operation of law in accordance with 30 U.S.C. § 28i (2000). See SOR at 3; 2002 Judgment at 5. In November 1995 Prichard relocated his forfeited claims; Recon did not attempt to relocate its claims after Prichard's claims were forfeited. Id. at 4; see SOR at 3.

The state court action was bifurcated, and the court-appointed Special Master held a three-day trial on the first phase of the matter beginning on April 17, 1995. On July 28, 1995, the state court adopted the Special Master's May 4, 1995, Decision and issued a final judgment holding that, as of September 24, 1990, [2/] Recon had no right, title, or interest in any of the mining claims, which the court found were owned by Prichard. (SOR, Ex. M, Recon Mining Company, Inc. v. Prichard, CV92-01403, Second Judicial District Court, State of Nevada (Judgment Quieting Title July 28, 1995) (1995 Judgment), at 1-2.) [3/] On September 16, 2002, after completion of the remaining phase of the action, the court issued its 2002 Judgment quieting title to the claims in favor of Prichard. (2002 Judgment at 8.) [4/] Although Recon appealed the 2002 Judgment to the Nevada Supreme Court, the Court dismissed the appeal on February 24, 2003.

Beginning in 1990 and throughout the pendency of the state court proceedings, Recon paid the required mining claim fees to BLM. (SOR at 3 and Ex. J.) Prichard also paid the required fees every year after his 1995 relocation of the

[2/] The court did not explain why it chose Sept. 24, 1990, rather than Sept. 20, 1990, as the key date for determining claim ownership.

[3/] Nothing in the record indicates that the 1995 Judgment, which explicitly stated that it was a final judgment on the merits (1995 Judgment at 2), was stayed or otherwise rendered ineffective pending resolution of the second phase of the litigation. The second phase did not revisit the determination that Recon's claims were invalid as of Sept. 24, 1990, although the court did consider and reject Recon's contention that Prichard's failure "to pay the annual assessment for the year 1993/1994 operated to re-vest title to the claims in [Recon]." (2002 Judgment at 5.)

[4/] According to BLM, the 1995 Judgment covered 110 claims and the 2002 Judgment addressed 132 claims. See BLM Decision at 1 and Exs. A and B.

claims. Id. at 3 and Ex. K. On February 20, 2003, citing 43 CFR 3833.1-1 (2003), [5/] Recon requested a total refund of all the claim payments [6/] it had remitted to the Department over the past 13 years for the 137 claims covered by the request. Recon based its request on the 1995 and 2002 Judgments' declarations that the Recon claims were null and void and that Recon had possessed no right or title to the claims since September 24, 1990. Recon estimated that the amount of the refund due for the period 1990 to 2003 was $127,155.00, plus any interest.

BLM issued its decision on June 10, 2003. [7/] BLM adopted the state court's holding that Recon had been divested of title to its mining claims and closed the 137 mining claims listed on the attached Exhibit C on BLM's official records. BLM rejected the requested refund, however, concluding that, although Recon had paid the claim rental and maintenance fees required by 43 CFR 3833.1-5 (2003), it was not entitled to a refund under 43 CFR 3833.1-1(c) (2003) because it had "failed to provide a sufficient basis to support a determination that the subject claims were either abandoned and void by operation of law, null and void ab initio, or otherwise forfeited at the time of recordation." (BLM Decision at 2 (emphasis in original).) BLM further found that the one-time $25 per claim location fee mandated by 30 U.S.C. § 28g (2000) and 43 CFR 3833.1-4 (2003) was nonrefundable, and that service charges for recording new claims were not returnable after the received

[5/] The regulations at 43 CFR Part 3830 were amended effective Nov. 24, 2003. See 68 FR 61046, 61064 (Oct. 24, 2003). The provisions addressing refunds are now found at 43 CFR 3830.22.

[6/] Recon apparently sought the return of not only the rental and maintenance fees it had paid for the claims, but also the $25 per claim location fee, the service charges for recording new claims, and the service charges for its FLPMA filings.

[7/] Although BLM sought an opinion from the Field Solicitor's Office concerning the refund request, specifically whether the Nevada state court's decision was equivalent to a BLM null and void ab initio decision (Mar. 3, 2003, Memorandum from Nevada State Office, BLM, to Field Solicitor), the case file does not contain a response from the Field Solicitor's Office. The record does include an electronic mail message from the Senior Specialist for Mining Law Adjudication, Washington Office, BLM, acknowledging that BLM was required to accept the state court's decree of title and possession here, but stating that no refund should be allowed because the fees were paid for the claim and not the person; that if the fees were refunded the claims would be forfeited for lack of the required fee payments; and that the rival claimants would have to sort out between themselves who owed what to whom. (May 29, 2003, electronic mail from Roger Haskins, Washington Office, BLM, to Elaine Lewis, Nevada State Office, BLM.)

documents had been docketed and serialized. BLM also denied Recon's request for interest, pointing out that the Government did not pay interest unless it had consented to be liable for such interest by legislation or by contract. (BLM Decision at 2.)

On appeal Recon contends that the 1995 Judgment conclusively established that it was divested of any right, title, or interest in or to the claims at issue as of September 24, 1990, and that, from the date of the 1995 Judgment through the continued litigation, it gained no benefit from continuing to pay the fees. (SOR at 4.) Recon proffers three justifications for refunding the payments. First, it avers that the abandonment by operation of law of the original claims for failure to file the required FLPMA affidavit entitles it to a refund pursuant to 43 CFR 3833.1-1(c) (2003). [8/] Second, Recon maintains that the fees paid after the 1995 Judgment must be refunded because those fees were paid on claims determined to be null and void. Third, Recon asserts that since both it and Prichard paid fees for the same claims from 1990 through 2002, 43 CFR 3833.1-1(d) (2003) mandates that the duplicate payments be returned. (SOR at 4-6.)

BLM did not file an answer or otherwise respond to Recon's SOR.

[1] The refundability of service charges, location fees, and rental and maintenance fees is governed by 43 CFR 3833.1-1 (2003). That regulation provides:

> (a) Service charges submitted for new recordings under § 3833.1-2 [mining claim location notices] are not returnable or refundable after the document has received the processing for which the service charges were paid.
>
> (b) Service charges submitted with documents to be filed pursuant to §§ 3833.2 [FLPMA annual filings] and 3833.3 [notices of transfers of interest] are returnable or refundable if, at the time of submission, the affected mining claim or site is determined to be null and void or abandoned by operation of law.
>
> (c) Maintenance and location fees are not returnable or refundable unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by operation of law, or otherwise forfeited.

[8/] This argument is irrelevant since none of the fees paid between 1990 and 2003 are attributable to the abandoned mining claims.

> (d) Maintenance fees, location fees, or service charges made in duplicate for the same claim or site or otherwise overpaid are returnable or refundable. The money will be returned or refunded to the party who submitted it. The authorized officer may apply the fee to a future year if so instructed by the payor.

Recon has requested a refund of all the fees it paid for the claims from 1990 through 2003, apparently including service charges, location fees, and rental and maintenance fees. Since location notices for the relocated claims "received the processing for which the service charges were paid" when they were recorded with BLM on September 21, 1990, the service charges for processing those location notices are not refundable or returnable under 43 CFR 3833.1-1(a) (2003), and we affirm BLM's decision to the extent it rejected the refund request for those service charges. Additionally, the location fees Recon paid for its relocated claims are not refundable under 43 CFR 3833.1-1(c) (2003) because the location notices indicate that the claims were located on September 20, 1990, while the state court invalidated those claims as of September 24, 1990. Since the claims were not null and void on the date the location fees were paid, BLM properly rejected Recon's request for a refund of the location fees, and we affirm BLM's decision to the extent it rejected the refund request for the location fees.

The fate of Recon's request for a refund of the rental and maintenance fees paid for the claims turns on the interpretation of the clause "unless the mining claim or site has been determined, as of the date the fees were submitted, to be null and void, abandoned by law, or otherwise forfeited." 43 CFR 3833.1-1(c) (2003). The regulation clearly requires a determination of claim invalidity before a refund can be allowed, [9/] and the placement of the phrase "as of the date the fees were submitted" appears to indicate that the invalidity determination must have been made as of the date the fees were submitted for those fees to be refundable. In this case, the Nevada state court declared Recon's claims null and void on July 28, 1995. See 1995 Judgment at 1. Recon therefore is entitled to a refund of the fees it paid after July 28, 1995, since the mining claims had "been determined, as of the date the

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[9/] The current refund regulation, 43 CFR 3830.22, does not require a determination that the claim is void:

"(b) BLM will refund maintenance and location fees if:

"(1) At the time you or your predecessor in interest located the mining claim or site, the location was on land that was not open to mineral entry or otherwise was not available for mining claim or site location; or

"(2) At the time you paid the fees, the mining claim or site was void."

[post-July 28, 1995,] fees were submitted, to be null and void." 43 CFR 3833.1-1(c) (2003).

The fact that the determination was made by the state court and not BLM does not undermine this result. The validity of Recon's claims depended on whether it or Prichard had the right to possess their respective claims. The Department has no authority to determine the question of the right of possession to claims as between rival claimants; rather, the proper method for resolving such private party disputes is through a suit filed in court of competent jurisdiction, as was done here. See Primus Resources, L.C., 144 IBLA 364, 365 (1998); W. W. Allstead, 58 IBLA 46, 48 (1981); see also 30 U.S.C. § 30 (2000) (providing that adverse claims to patent applications must be resolved by a court of competent jurisdiction and that BLM shall issue a patent for the claim or portion thereof "as the applicant shall appear, from the decision of the court, to rightly possess"). We therefore reverse BLM's decision to the extent it denied Recon's refund request for the maintenance fees paid after July 28, 1995. [10/]

The refundability of the fees paid between September 24, 1990, and July 28, 1995, is more problematic. The preamble to the 1994 final mining claim maintenance fee regulations, which include 43 CFR 3833.1-1 (2003) (denominated in the proposed regulations as 43 CFR 3833.1-8), contains the following discussion:

> One comment asked if fees or charges should be returnable if the claims are still shown as active on BLM records but have been voided or abandoned by operation of law, but for which a decision has not yet been issued. The answer is yes, if for some reason payments are made on such claims.

59 FR 44846, 44853 (Aug. 30, 1994).

This explanation appears to allow fee refunds for periods before issuance of a claim invalidity determination, at least in some circumstances, i.e., when claims are voided or abandoned by operation of law, and supports interpreting 43 CFR 3833.1-1(c) (2003) to permit refunds if the claims were invalid at the time the

[10/] Regulation 43 CFR 3833.1(b) (2003) governing the refundability of service charges associated with FLPMA filings contains qualifying language similar to that of 43 CFR 3833.1(c) (2003), and our conclusions regarding the latter regulation also apply to Recon's request for a refund of any service charges it might have paid for FLPMA filings. We note that the current regulations do not authorize refunds of service charges, except for overpayments. See 43 CFR 3830.22(a).

payment was submitted, regardless of when the determination finding the claims invalid was issued. See also 59 FR 24572, 24573-74 (May 11, 1994) (proposed 43 CFR 3833.1-8 (43 CFR 3833.1-1 (2003)) would allow refunds where a payment was made for a mining claim that was void by operation of law at the time the payment was made); cf. 43 CFR 3830.22(b) (omitting any reference to a determination of claim invalidity). BLM's statement in its March 3, 2003, memorandum requesting an opinion from the Field Solicitor's Office that its then current practice was to refund all fees since recordation, except service charges, when it issued a null and void decision on a mining claim also seems to endorse expanded fee refundability. Given the inconsistency between BLM's stated practice and its stance in this appeal, the absence of any explanation by BLM for this inconsistency, and the existence of plausible, alternative interpretations of 43 CFR 3833.1-1(c) (2003), we believe the best course of action is to set aside BLM's decision to the extent it denied Recon's request for a refund of payments made between September 24, 1990, and July 28, 1995, and remand the matter to BLM for further review. [11/]

[2] Recon's refund request also sought interest on the refunded payments. Interest does not accrue on a claim against the United States absent a statutory or contractual provision expressly authorizing the payment of interest. United States v. Louisiana, 446 U.S. 253, 264-65 (1980); Amerada Hess Corp., 128 IBLA 94, 98 (1993); Gordon L. Hardy, 106 IBLA 227, 229 (1988); Marathon Oil Co. (On Reconsideration), 103 IBLA 138, 142 (1988); Amoco Production Co., 101 IBLA 152, 153 (1988); Romola A. Jarett, 63 IBLA 228, 230, 89 I.D. 207, 208 (1982). Recon has offered no statutory or contractual authority for the payment of interest in this case, nor have we found any such authority. Accordingly, we affirm BLM's denial of Recon's request for interest.

[11/] Although Recon maintains that its payments essentially were duplicate payments refundable in accordance with 43 CFR 3833.1-1(d) (2003), its claims and Prichard's claims, despite covering the same ground, were not the same claims, and its payments were not duplicate payments for the Prichard claims. We therefore reject Recon's contention that 43 CFR 3833.1-1(d) (2003) requires BLM to refund the claim payments.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, reversed in part, set aside in part, and remanded for further action consistent with this opinion. [12/]

H. Barry Holt
Chief Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

[12/] We note that, although BLM's decision affected 137 mining claims, the 1995 Judgment covered only 110 claims. Our decision impacts only those claims determined to be void by the state court in the 1995 Judgment.

EXHIBIT 8

Damitz, Maria <mdamitz@blm.gov>

Please Close These Claims - On Forfeit List

2 messages

Ventus, Tatiana <tventus@blm.gov> Mon, Jul 11, 2016 at 3:19 PM
To: Maria Damitz <mdamitz@blm.gov>

Hey Maria,

Can you close the following list of claims? If you are unable to close any of the claims for any reason please let me know so I can notate the forfeit list and let Debra know the status of our claims.

Here is the list:

Durand/ GEM
CAMC260374-79
CAMC261310-17
CAMC261324-26
CAMC261329
CAMC261331-32

George Rodda/ Bagdad
CAMC299159
CAMC299564
CAMC299566-67

Thanks!

Tatiana R. Ventus
Land Law Examiner Trainee
Division of Energy & Minerals - Adjudication
USDOI Bureau of Land Management
(916) 978-4374

Damitz, Maria <mdamitz@blm.gov> Wed, Jul 13, 2016 at 1:48 PM
To: "Ventus, Tatiana" <tventus@blm.gov>

Tati,
Debra is aware of all these 2 "cases", so can you go ahead and put my name next to all of these CAMC #s on the forfeit list. Turns out I need to refund everything from 1999 on the Durand/GEM files. Am also working on Rodda/Bagdad.

Thanks,
Maria

Maria Damitz
Land Law Examiner
Division of Energy & Minerals
Bureau of Land Management, California
(916) 978-4381
mdamitz@blm.gov

[Quoted text hidden]